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Supreme Court of the United States

OCTOBER TERM, 1957

No. 662

HOTEL EMPLOYEES LOCAL NO. 255, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, ET AL., PETITIONERS,

vs.

BOYD LEEDOM, INDIVIDUALLY AND AS CHAIRMAN, NATIONAL LABOR RELATIONS BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 13, 1957
CERTIORARI GRANTED MARCH 3, 1958

SUPREME COURT OF THE UNITED STATES

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IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,765

HOTEL EMPLOYEES LOCAL NO. 255, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION,

and

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L.-C.I.O., Appellants,

v.

BOYD LEEDOM, individually and as Chairman, NATIONAL LABOR RELATIONS BOARD, et al., Appellees.

Appeal from the United States District Court for the District of Columbia

---

JOINT APPENDIX

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 134-'56

HOTEL EMPLOYEES LOCAL NO. 255, HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, 1575 Washington Avenue, Miami Beach, Florida,

and

HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L.-C.I.O., 525 Walnut Street, Cincinnati, Ohio, Plaintiffs,

v.

BOYD LEEDOM, individually and as Chairman of the National Labor Relations Board, and ABE MURDOCK, IVAR PETERSON, PHILIP RAY ROGERS and STEPHEN SIBLEY BEAN, individually and as members of the National Labor Relations Board, Federal Security Building, South, 4th and Independence Avenue, SW, Washington 25, D. C., Defendants.

COMPLAINT—Filed January 12, 1956

The Plaintiffs, for their claim for relief against the defendants, allege as follows:

1. The jurisdiction of this court is invoked under: the Constitution of the United States and particularly Article I, Section 8 thereof and Amendment V Thereto; the Labor Management Relations Act, 1947, as amended, 29 U.S.C. Section 141, et seq., the Administrative Procedures Act, 5 U.S.C. Section 1001, et seq., the Federal Declaratory

Judgment Act, 28 U.S.C. Section 2201, et seq.; and 28 U.S.C. Section 1331.

[fol. 2] 2. There is a real and actual controversy between the parties and said controversy, exclusive of interest and costs, exceeds $3,000.00.

3. Plaintiff Hotel Employees Union Local 255, hereinafter referred to as "Local 255," is a voluntary unincorporated association with its principal office located at 1575 Washington Avenue, Miami Beach, Florida. Said Local 255 is a labor organization within the meaning of the Labor Management Relations Act, 1947 (hereinafter referred to as the "Act") and represents employees in an industry affecting commerce, as defined by said Act.

4. Plaintiff Hotel & Restaurant Employees and Bartenders International Union, with its principal offices at 525 Walnut Street, Cincinnati, Ohio, is an unincorporated association and labor organization within the meaning of the Act and is composed of affiliated local labor organizations including plaintiff Local 255 and the members thereof. Said International Union represents employees throughout the United States in industries affecting commerce and particularly in the hotel industry.

5. The plaintiffs sue in their own behalf and on behalf of employees whom they represent.

6. The National Labor Relations Board is an agency of the United States; the defendant Boyd Leedom as the Chairman, and the defendants Abe Murdock, Ivar Peterson, Philip Ray Rodgers and Stephen Sibley Bean as members thereof, pursuant to Title I, Section 3 of the Act, constitute and comprise said Board. The defendants are sued individually and as Chairman and members, respectively, of said Board and are hereinafter referred to collectively as "Board".

7. The principal office and place of business of the Board is in the District of Columbia pursuant to Title I, Section 5 of said Act.

8. The Miami Beach Hotel Association, hereinafter referred to as "Association", is a trade association having

a membership of more than 150 hotels in the Miami Beach, Florida area. At all times material herein, said Association and the individual members thereof have been engaged in interstate commerce; their operations individually affect commerce; and a labor dispute with said Association or the individual members thereof or any of them would [fol. 3] tend to burden and obstruct commerce and the free flow of commerce, all within the meaning of said Act.

9. The individual hotel members of said Association and said Association are "employers" within the meaning of said Act.

10. The Act provides, inter alia, as follows, under Section 9 (c) thereof:

> "(c)(1) Whenever a petition shall have been filed in accordance with such regulations as may be prescribed by the Board—
>
> (A) by an employee or a group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employers decline to recognize their representative as the representative defined in Section 9 (a) . . .
>
> the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists and provide for an appropriate hearing upon due notice . . . If the Board finds upon the record of such hearing that such a question of representation exists it shall direct an election by secret ballot and shall certify the results thereof."

11. On or about the 29th day of June, 1955, plaintiff Local 255, on behalf of a group of employees of the aforementioned employers filed a petition for representation with the Tenth Regional Office of said Board, all in accordance with the provisions of said Act and the regulations prescribed by said Board. Said Regional Office captioned

said petition "All Hotel Members of Miami Beach Hotel Association," Case No. 10-RC-3135.

12. Immediately thereafter, on the 30th day of June, 1955, the Regional Director of said Region, as agent for said Board, advised Local 255, inter alia, as follows:

> ". . . You are hereby advised that absent the receipt of a withdrawal request before the close of business tomorrow July 1, 1955 the petition for certification of representatives will be dismissed."

[fol. 4] 13. Said petition was not withdrawn and, on the 1st day of July, 1955, the aforementioned Regional Director, as agent of said Board, advised Local 255, inter alia, as follows:

> "It does not appear that further proceedings are warranted inasmuch as it would not effectuate the policies of the Act to assert jurisdiction in this case. Accordingly the petition is dismissed."

14. Thereafter, on or about the 13th day of July, 1955, in accordance with the rules and regulations of said Board, the plaintiffs did file a Request for Review of the aforementioned decision of the Regional Director. On or about the 26th day of August, 1955, the said Board did issue a Decision and Order in part as follows:

> "Re All Hotel Members of Miami Beach Hotel Assoc., Case 10-RC-3135, the Board has carefully considered the appeal filed in this case and decided to sustain the Regional Director's dismissal of the petition on the ground that it would not effectuate the policies of the Act to assert jurisdiction over hotels. Accordingly, the petition is dismissed."

15. Thereafter, on or about the 9th day of September, 1955, plaintiffs did file with the defendant Board a Request for Reconsideration of the aforementioned Decision and Order of August 26, 1955, and on the 10th day of October, 1955, said Board did overrule said request.

16. At all times since the filing of the aforementioned petition a question of representation affecting commerce within the meaning of the Act has existed and continues to exist in regard to the employer members of the said Association.

17. On or about the 7th day of July, 1955, in accordance with the rules and regulations of said Board, Local 255 did file with the aforementioned Regional Director of the Tenth Region a charge alleging the commission of certain unfair labor practices by the aforementioned employers within the meaning of Section 8(a)(1)(3) and (5) of said Act. On or about the 30th day of August, 1955, the Regional Director of said Region, on behalf of the General Counsel, refused to assert jurisdiction over said Associa- [fol. 5] tion and the individual members thereof and therefore refused to investigate or issue a complaint on said charges.

18. On or about the 8th day of September, 1955, in accordance with the rules and regulations of the Board, Local 255 did file with the General Counsel of said Board a Request for Review of the aforementioned action of the Regional Director.

19. On or about the 14th day of October, 1955, the General Counsel advised the plaintiffs, inter alia, as follows:

> "The General Counsel sustains the ruling of the Regional Director. The General Counsel concludes that in view of the Board's recent decision in *All Hotel Members of Miami Beach Hotel Association*, et al., Case No. 10-RC-3135, reaffirming its jurisdictional policies with regard to the hotel industry, further proceedings herein are not warranted."

20. Plaintiffs have by the foregoing acts exhausted their administrative remedies, and there is no adequate or existent proceeding for judicial review of the aforementioned Decision and Order.

21. The aforementioned Decision and Order of the Board dated August 26, 1955, in withholding agency action is

illegal and void in that it deprives plaintiffs and their members of their rights without due process of law, equal protection of the Labor Management Relations Act, 1947 applicable to all persons similarly situated, and discriminates against plaintiff labor organizations and the members thereof employed in the hotel industry, all in violation of Amendment V of the Constitution of the United States.

22. At all times material herein the said Board has failed and refused to investigate the aforementioned petition filed on June 29, 1955; has failed and refused to provide for appropriate hearing on due notice; has failed and refused to direct an election by secret ballot; and has failed and refused to certify the results thereof, all contrary to and in violation of Section 9 (c) of said Act.)

23. The Decision and Order of the Board dated August 26, 1955, is illegal and void in that same was determined without investigation, hearing, or affording plaintiffs [fol. 6] opportunity to present evidence, all in violation of Amendment V of the Constitution of the United States.

24. The Decision and Order of the Board dated August 26, 1955, is illegal and void in that the arbitrary exclusion of the hotel industry from the operation of the Act is an unlawful and unconstitutional assumption of legislative power in violation of Article I, Section 8 of the Constitution of the United States.

25. The Decision and Order of the Board dated August 26, 1955, is illegal, void and in excess of statutory authority; in that, said Act does not grant the Board authority to dismiss proceedings under Section 9 (c) of the Act on the grounds set forth in said Order and the provisions of Section 9 (c) are mandatory upon said Board.

26. The Decision and Order of the Board dated August 26, 1955, is illegal and void in that said Order is contrary to and in violation of the provisions of Section 9 (c) of the Labor Management Relations Act as amended.

27. The Decision and Order of the Board dated August 26, 1955, is illegal and void in that said Decision and

Order constitute a "Rule" within the meaning of the Administrative Procedures Act, 5 U.S.C.A. 1001 (c) and was promulgated in violation of the requirements of said Act and particularly 5 U.S.C.A., 1003 et seq.

28. The Decision and Order of the Board dated August 26, 1955, is arbitrary and capricious and constitutes an abuse of the Board's discretion, if there is such discretion.

29. The Decision and Order of the Board dated August 26, 1955, is illegal and void in that it is not supported by any evidence.

30. If the Labor Management Relations Act, 1947 as amended, is so construed as to permit said Board to exclude the hotel industry from its operation on a policy basis without reference to the facts, then said Act is an unlawful delegation of legislative function and contrary to Article I, Section 8 and Amendment V of the Constitution of the United States.

31. The Decision and Order of the Board dated August 26, 1955, has deprived the plaintiffs and their members of their right to participate in elections and other pro- [fol. 7] ceedings before the National Labor Relations Board, to be certified as the collective bargaining representatives of employees of the employers herein and the employers in the hotel industry throughout the United States; and deprived them of their constitutional and statutory right to organize and represent employees in the hotel industry. Said Decision and Order of the Board has deprived employees represented by plaintiffs of the rights afforded to them under the Labor Management Relations Act, 1947, to associate together and to organize and bargain collectively through representatives of their own choosing, and has deprived said employees of the protection of the said Act in exercising said rights. Unless restrained by this court, defendants will continue to deprive plaintiffs and their members of said rights.

32. Substantial and irreparable injuries to plaintiffs' rights and the rights of plaintiffs' members will result unless the relief requested by plaintiffs is granted.

Wherefore, plaintiffs pray:

1. That a declaratory judgment be granted by this court declaring that the Decision and Order of the National Labor Relations Board dated August 26, 1955, dismissing the petition in the case captioned "All Hotel Members of Miami Beach Hotel Association, No. 10-RC-3135", in unconstitutional, unlawful, arbitrary, capricious and/or an abuse of said Board's discretion, and that said Order be set aside and held for naught.

2. That a declaratory judgment be rendered by this court declaring that the National Labor Relations Board may not withhold its processes and the benefits of the Labor Management Relations Act, 1947, as amended, from the plaintiffs or any other labor organization or representative of employees on the sold (sic) ground that it does not effectuate the policies of the Act to assert jurisdiction over hotels."

3. That a permanent injunction be granted by this court ordering the defendants individually and as members of the National Labor Relations Board, their agents, servants, employees, representatives and all persons in concert or participation with them, to investigate the petition of plaintiff, Local 255, in the case captioned "All Hotel Mem-[fol. 8] bers of the Miami Beach Hotel Association, No. 10-RC-3135"; to provide for a hearing on due notice; to conduct an election; and to certify the results thereof.

4. That a permanent injunction be granted restraining and enjoining the defendants, their agents, servants, employees, representatives and attorneys and all persons acting in concert or participation with them or any of them from withholding the processes and facilities of the National Labor Relations Board and from dismissing the petition of the plaintiffs or any other labor organization on the sole grounds (sic) that it does not effectuate the policies of the Act to assert jurisdiction over hotels."

5. That this court issue an order temporarily restraining and enjoining the defendants in the manner as described in paragraphs 3 and 4.

6. That the court grant any further relief it deems just and proper in the premises.

/s/ J. W. Brown, /s/ Jonas B. Katz, Attorneys for Plaintiffs, 1505 Fountain Square Bldg., Cincinnati 2, Ohio, DUnbar 1-2121.

/s/ John E. McCarty, 736 Bowen Bldg., 815—15th Street, N.W., Washington, D. C.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANTS TO DISMISS THE COMPLAINT, OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT IN THEIR FAVOR —Filed March 12, 1956

Come now the defendants, by their attorneys, and, in opposition to plaintiffs' motion for a permanent injunction and declaratory judgment move:

1. That the complaint herein be dismissed because:

(a) This Court is without jurisdiction of the subject matter of this action.

[fol. 9] (b) The complaint fails to state a claim warranting judicial relief.

2. In the alternative, that summary judgment for defendants be granted, on the basis of the complaint and the affidavit of Frank M. Kleiler, Executive Secretary of the National Labor Relations Board, and Exhibit A, B and C annexed thereto, which documents are attached to and made a part of this motion.

Wherefore, it is respectfully requested that plaintiffs' motion for a permanent injunction and declaratory judgment be denied, and that the relief requested by the defendants be granted.

/s/ Marcel Mallet-Prevost, Assistant General Counsel.

Arnold Ordman, John E. Jay, National Labor Relations Board, Attorneys for Defendants.

Dated March 12, 1956.

AFFIDAVIT OF FRANK M. KLEILER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS, OR FOR SUMMARY JUDGMENT

District of Columbia, ss.:

Frank M. Kleiler, being first duly sworn, deposes and says:

1. He is executive secretary of the National Labor Relations Board and is authorized by Section 102.87 of the Rules and Regulations of the Board, Series 6 (29 C.F.R. 102.87) to certify copies of all papers and documents which are a part of any of the files or records of the Board.

2. He has examined the files and records of the Board in the proceedings entitled, "All Hotel Members of Miami Beach Hotel Association," Case No. 10-RC-3135, and has personal knowledge of the facts set forth herein.

3. In the subject representation proceeding, Hotel Employees Union Local No. 255, Hotel and Restaurant Employees and Bartenders International Union, AFL, [fol. 10] hereinafter referred to as Local No. 255, filed a petition on June 29, 1955, seeking representation as exclusive bargaining representative for the employees employed by the hotel members of the Miami Beach Hotel Association, excluding all office and clerical employees, management employees, professional employees, and guards and supervisors as defined in the Act.

4. On July 1, 1955, after advising petitioner Local 255 of the Board's long standing policy not to exercise jurisdiction over the hotel industry in the States, referring to various prior decisions of the Board, and affording Local 255 an opportunity voluntarily to withdraw the petition, the Regional Director for the Tenth Region dismissed the petition. A copy of the Regional Director's dismissal of the petition is annexed hereto as Exhibit A.

5. Pursuant to the request of Local 255, dated July 12, 1955, for review of the Regional Director's action dismissing the petition, the Board granted Local 255 permission to present oral argument, and to file a brief, on August 9, 1955. Thereafter, the Miami Beach Hotel Association and the American Hotel Association were granted permission to participate in oral argument and file briefs. Oral

argument before the Board was had on August 9, 1955. Excerpts from the transcript of the hearing are annexed hereto as Exhibit B.

6. On August 26, 1955, the Board, with one member dissenting, issued its decision sustaining the action of the Regional Director in dismissing the complaint. A copy of the Board's minute is annexed hereto as Exhibit C.

7. On September 9, 1955, Local No. 255 filed a request for reconsideration which was denied by the Board on October 10, 1955, with one member dissenting.

8. On January 9, 1955, Local No. 255 filed a request for further reconsideration which was denied by the Board on January 27, 1956, with one member dissenting and another member not participating.

/s/ Frank M. Kleiler, Executive Secretary, National Labor Relations Board.

[fol. 11]

EXHIBIT A TO MOTION

NATIONAL LABOR RELATIONS BOARD
Tenth Region
Room 537, Peachtree-Seventh Building
50 Seventh Street, Northeast
Atlanta 5, Georgie

Tel. Elgin 3311

July 1, 1955

Registered Return
Receipt Requested

Hotel Employees Union Local No. 255
Hotel & Restaurant Employees and Bartenders
International Union
1575 Washington Avenue
Miami Beach, Florida

Attention: Mr. Jonas B. Katz

Re: All Hotel Members of Miami Beach Hotel Association Case No. 10-RC-3135

Gentlemen:

The above captioned case petitioning for an investigation and certification of representatives under Section 9

of the National Labor Relations Act, as amended, has been fully considered.

On October 26, 1954, the Board issued its Decision and Order in *The Virgin Isles Hotel, Inc.*, case (110 NLRB No. 65) supplementing its recently announced standards for the assertion of jurisdiction and reiterating its "long standing policy not to exercise jurisdiction over the hotel industry. Consequently, it does not appear that further proceedings are warranted inasmuch as it will not effectuate the policies of the Act to assert jurisdiction in this case. I am, therefore, dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing a request for such a review with the National Labor Relations Board, Washington, 25, D. C., a copy with me and a copy to all the interested parties. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request should be filed within ten (10) days from the date of receipt of this letter, except that the Board may, upon good [fol. 12] cause shown, grant special permission for a longer period within which to file.

Very truly yours,

/s/ John C. Getreu
Regional Director

cc: National Labor Relations Board
Washington, D. C.
Miami Beach Hotel Association
1 Lincoln Road
Miami Beach, Florida (with copy of petition attached)

J. W. Brown, Esquire
Attention Jonas B. Katz
1505 Fountain Square Building
Cincinnati 2, Ohio

All Concerns named in Petition as Members of The Association (with copy of Petition attached)

EXHIBIT B TO MOTION

NATIONAL LABOR RELATIONS BOARD

CASE NO. 10-RC-3135

In the matter of:

ALL HOTEL MEMBERS OF MIAMI BEACH HOTEL ASSOCIATION

and

HOTEL EMPLOYEES UNION LOCAL NO. 255, HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL, Petitioner.

Room 2030 Health, Education and
Welfare Building, South,
Washington, D. C.,
Tuesday, August 9, 1955.

Oral argument in the above entitled matter convened at 10:05 o'clock a.m.

BEFORE:

GUY FARMER, Chairman
ABE MURDOCK, Member
IVAR H. PETERSON, Member
[fol. 13] PHILIP RAY RODGERS, Member
BOYD LEEDOM, Member

* * * * * * *

Mr. Murdock: How does the situation you are now calling attention to differ in respect to what was involved when you argued the St. Louis case? It is the same law, isn't it?

Mr. Brown: The magnitude. The same law, the same sections and, I think, the same policy of the United States. But I hope a different policy on the part of the Board. The facts, however, are quite different. In the St. Louis case we had, first, as I said, a smaller situation, and you

must remember that the Board's decision was based upon the facts in the St. Louis case.

You will recall that the Board said, "We do not believe that a settled policy, endorsed by all those members of Congress who have reported an opinion on the subject" —and I think that was two— "should be lightly overturned by the action of the administrative board. And certainly no persuasive reasons have been presented to warrant overturning it in this case."

Mr. Murdock: That is the argument you made in the St. Louis case.

Mr. Brown: Yes. Apparently in the St. Louis case there weren't sufficient facts to overwhelm the Board, facts that would strike the conscience of a man and compelling action, that at least persuaded the majority of the Board. The Board was very careful to say in the St. Louis case, as were all the parties, that the Board does have jurisdiction. There was no argument on that point and there is none today, as I understand it. Even counsel— I myself, in arguing at that time opposing jurisdiction, made a specific argument to the effect that the Board does have jurisdiction.

Chairman Farmer: You mean over any and all hotels, regardless of the particular facts?

Mr. Brown: No. I said we were considering the St. Louis case. There was no question in my mind that the Board [fol. 14] had jurisdiction in the St. Louis case, nor was there any question in the mind of Mr. Brownell, who argued for the American Hotel Association at that time. He made the same argument, that the Board unquestionably had jurisdiction. I would like to read to you his statement at the time.

> "When you have legislative policy here and an administrative policy which has been unanimous for a period of 15 years, upon which the hotel industry has relied and when no question as to settling labor disputes in the hotel industry has ever risen, then I say that as a matter of administrative discretion you should not disturb that policy."

Then a more apt quotation in an exchange between Mr. Houston and Mr. Brownell at that time.

> "Mr. Houston: Let me ask you this: In the light of the quotations of Senator Taft and Senator Pepper, do you concede that we have discretion in the matter?
>
> "Mr. Brownell: Well, I think there is no question but that you have jurisdiction in the matter and I am appealing to your discretion."

So throughout the argument, all the parties were in unanimous accord that the Board does have jurisdiction in the hotel industry.

How could it be otherwise? We have an industry which is the seventh largest in the United States, which does seven and a half billion dollars worth of business, which involves more than a half million dollars in the principal hotels. I am not getting down to the rooming house level, but the large hotels in the general class that might be taken under your wing, under your jurisdiction.

Take, for example, the Florida figures. How big is the industry in Florida? Maybe this would be enlightening to the Board.

Mr. Murdock: Are you arguing now, Mr. Brown, that there has been such a change in the size of the hotel business that it warrants a different decision today than it did then?

Mr. Brown: No. There has been no change——

Mr. Murdock: Those figures were present in the St. [fol. 15] Louis case, except I would imagine a moderate growth since that time.

Mr. Brown: Those figures might have been present in the St. Louis case, but they were not argued. The situation hasn't changed radically with regard to the size of the industry, the ranking of the industry. It was probably seventh then, too, but we didn't argue those points to you, and no one else argued them to you. As a matter of fact, the St. Louis case was argued as the St. Louis case. There was a complete hearing below. There was evidence taken over a period of three weeks. There were serious questions of unit. There were other questions involved which you have every day. All those questions

were presented here. Then after that case was heard by this Board, the Board disregarded many of the technical questions and the case turned entirely on one of policy. The Board determined that it would not take jurisdiction in hotels because it hadn't done so previously.

Mr. Murdock: The change, then, that you are talking about when you talk about a change in facts, is largely the fact of the relationship between the employees and employers in the hotel industry. Today, as I understand it, there is a rather gigantic strike on in the Florida area. Is that the essential difference?

Mr. Brown: Yes, sir.

Mr. Murdock: Could that have been reasonably anticipated when the St. Louis case was argued?

Mr. Brown: Let me say to you, Mr. Murdock, it should have been reasonably anticipated by myself, by my clients, and unfortunately it was not. You have touched on something which is a little out of the order that I intended to present it, but since you asked the question——

Mr. Murdock: Don't let me disturb you on it.

Mr. Brown: Let me take the point and answer it since you have brought it up, rather than let the question hang there.

What is the situation today as contrasted with 1951 in the field of labor relations?

Prior to 1951, we had no difficulty getting along with hotelmen all over the United States. When I say "we," I [fol. 16] mean the Hotel & Restaurant Employees International Union. We had a sort of regularized procedure, informal but quite regular, and relatively peaceful. We had our strikes, our differences, as all organizations have; but generally speaking, if we had a majority of the people in the hotel, management sat down and negotiated with us. Generally speaking, management wouldn't fire people for union activity or for joining a union or for trying to organize one. So we had a relatively peaceful relationship.

But as soon as the 1951 case was announced, things changed overnight.

Mr. Murdock: How about the closed shop situation in the hotel industry at the time of the St. Louis case? Was it very prevalent, or did it exist at all?

Mr. Brown: No. We never and we still do not have a closed shop hardly anywhere. We have a union shop. So you see, that source of friction didn't exist.

EXHIBIT C TO MOTION

MINUTE OF BOARD ACTION

August 26, 1955

ALL HOTEL MEMBERS OF MIAMI BEACH HOTEL ASSOCIATION

Case No. 10-RC-3135

The Board determined to sustain the Regional Director's dismissal of the petition in the above-entitled case.

On June 29, 1955 the Petitioner (Hotel Employees Union Local No. 255, Hotel and Restaurant Employees and Bartenders International Union, AFL), filed its petition herein for all employees of the Employer and, on July 1, 1955 the Regional Director dismissed the petition on the ground that it would not effectuate the policies of the Act to assert jurisdiction. Thereafter, on July 12, 1955 the Petitioner filed a Request for Review of the Regional Director's action asserting the Board should reverse its policy and take jurisdiction over the hotel industry. On August 9, 1955 the Board heard oral argument in this matter.

[fol. 17] The Board has decided to adhere to the long-established policy of not asserting jurisdiction over the hotel industry, on the ground set forth in *St. Louis Hotel Association*, 92 NLRB 1388. Accordingly, the action of the Regional Director was warranted. Member Murdock dissents from the determination of the majority to adhere to a policy of not asserting jurisdiction over any hotels without regard to their impact on commerce, in accordance with his views expressed in detail in his dissent in the *St. Louis Hotel Association* case. Accordingly, he would overrule the Regional Director and direct that the case be sent to hearing and on the basis of a full record determine the impact of the operations of the Employers herein on commerce.

Chairman Farmer believes that the Board should give consideration after a hearing to modifying its policy so as to take jurisdiction on a limited basis pursuant to appropriate standards.

APPROVED:

Farmer
Murdock (dissents)
Peterson
Rodgers
Leedom

/s/ Frank M. Kleiler
Executive Secretary

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JONAS B. KATZ IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT—
Filed April 9, 1956

State of Ohio,
County of Hamilton, ss.:

Jonas B. Katz, being first duly sworn, deposes and states:

1. He is one of counsel for plaintiff Hotel Employees Local 255 and had cause to investigate the facts and circumstances pertaining to the Miami Beach Hotel Association and is familiar therewith.

2. On or about the 9th day of August, 1955 plaintiffs filed a Brief upon Request for Review which set forth the facts pertaining to the effect on commerce of a question of representation of the Miami Beach Hotel Association; that excerpts from said brief are attached hereto, [fol. 18] marked Exhibit "A" and made a part hereof; that upon information and belief the facts contained in said brief are true; and the defendant Board has never afforded plaintiffs an opportunity to present evidence to substantiate said facts.

3. On or about the 7th day of July, 1955, plaintiffs did file with the Regional Director of the Tenth Region of

the National Labor Relations Board a charge against members setting forth innumerable actions constituting unfair labor practices (a copy of said charge is attached hereto, marked Exhibit "B" and made a part hereof). On information and belief, said charges are true and the Regional Director dismissed said charges without investigating same to ascertain the truth thereof and said dismissal was sustained by the General Counsel of the National Labor Relations Board without investigating said facts.

4. The decision and order of the Board attached to defendants' Affidavit to Exhibit 6 was rendered without reference to the above facts and without affording plaintiffs an opportunity to present said facts.

Further affiant saith not.

/s/ Jonas B. Katz

[fol. 18-a]

EXHIBIT A TO AFFIDAVIT OF JONAS B. KATZ

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

DOCKET NO. 10-RC-3135

In the Matter of:

ALL HOTEL MEMBERS OF MIAMI BEACH HOTEL ASSOCIATION,

and

HOTEL EMPLOYEES UNION LOCAL NO. 255, HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A. F. L.

BRIEF OF THE PETITIONER UPON REQUEST FOR REVIEW

J. W. BROWN,
General Counsel, Hotel & Restaurant Employees and Bartenders International Union

August 9, 1955

II

The Labor Dispute Involving the Miami Beach Hotels of Necessity Has A Pronounced Impact On The Flow Of Interstate Commerce.

The tourist industry in the Greater Miami and Miami Beach area ranks first in that area (Miami Economic Research, January, 1955, Volume 8, Number 1, p. 7) and the hotel industry is the primary and indispensable component. (Miami Daily News, Ex. 2 attached).

[fol. 18-b] During the year ending September, 1954, the four county area including Miami and southeast Florida had 2,560,000 visitors, (the greatest number of whom were accommodated by the hotel industry) who spent 47,600,000 visitor days and $513,000,000. Of this amount, $376,000,000 was spent in Dade County (Miami–Miami Beach) alone. This represents one-third of all spending in this county. $235,000,000 was spent in the Miami Beach area alone. This is equivalent to two and one-half times the spending of the residents of Miami Beach.

The hotel industry in Miami Beach has more than 30,000 units, employs approximately 12,000 people in all categories, and received for the year ending September, 1954, in excess of $74,000,000 for hotel lodging from visitors from outside of the state of Florida. These hotels also received in excess of $27,000,000 for food from these visitors. Thus the hotel industry of Miami Beach received over $100,000,000 in revenue from tourists moving in the chain of commerce. (Bureau of Economic Research, University of Miami).

The tourist industry of Miami and Miami Beach represents the leading industry of the area and produces more than the income of the next two leading industries (Miami Daily News, 3/16/1955, Ex. 2 attached). In 1949, when the tourist trade in the Greater Miami area was only $243,000,000 as compared with $376,000,000 in 1954, the income of the next leading industry (airline operations and repairs) was only $105,000,000, and income from all manufacturing was only $45,000,000; fruit and vegetable growing produced only $13,700,000 in total income.

In addition, the hotel industry of Miami Beach is closely allied to all types of interstate transportation systems.

During the year ending September, 1954, the airlines alone transported over 1,200,000 tourists to the Greater Miami area, the greatest number of these people being destined for accommodations in the hotels of the employer association herein.

The volume of interstate transportation connected with the employer association is readily apparent by reference [fol. 18-c] to the fact that for the period of September, 1953 through March of 1954, Eastern Airlines route from New York to Miami was first ranked in revenue production of all routes in the United States and National Airlines route from New York to Miami was second ranked. Eastern Airlines, during the aforementioned period, transported over 25,000 persons and received revenue in excess of $28,000,000. National Airlines transported in excess of 23,000 persons with revenue in excess of $25,000,000. Delta Airlines route from Chicago to Miami was sixth in rank throughout the United States with in excess of a $5,700,000 revenue. (Exhibits of North East Airlines in CAB hearing Docket No. 3051).

In addition, the airlines and hotels have entered into extensive contracts for "package vacation tours" which provide a single rate covering hotels, meals and travel. During the present year, Eastern Airlines and National Airlines alone will sell in offices outside the state of Florida in excess of $2,000,000 in hotel accommodations for members of the employer association herein, Eastern Airlines alone sold 55,000 package tours.

It is clearly apparent from the foregoing that a labor dispute at all Miami Beach hotels materially affects commerce within the meaning of the act and it is further submitted that Eastern Airlines and National Airlines, Delta, Florida East Coast Railway, Atlantic Coastline, etc., and all other carriers servicing this area would emphatically concur in this conclusion.

The extensive interstate commerce operations of the employer association and the hotels individually clearly bring them within the present jurisdictional standards of the National Labor Relations Board (See Ex. 3, Travel Section, N.Y. Times, 8/7/1955). These operations are such that a labor dispute involving these hotels is certain

to "have a pronounced impact on the flow of interstate commerce". *Hogue & Knott Supermarkets, Inc.*, 110 NLRB No. 68.

It cannot be disputed that a hotel by its very nature is a link in interstate commerce, and therefore the jurisdictional standards set forth by the Board in *Breeding* [fol. 18-d] *Transfer Co.*, 110 NLRB No. 64 is applicable. Likewise, it may be considered within the jurisdictional standards of *Jonesboro Grain Drying Cooperative*, 110 NLRB No. 67, wherein the Board stated that it will assert jurisdiction over

> "an enterprise which furnished goods or services to other enterprises coming within subparagraph #2 above, or to public utilities or transit systems or instrumentalities or channels of commerce and their essential links which meet the jurisdictional standards established for such enterprises and (a) such goods or services are directly utilized in the product service or process of such enterprise and are valued at $100,000 or more, (b) such goods or services regardless of their use are valued at $200,000."

The Board has recently applied the *Breeding* doctrine to a warehouse which stored merchandise coming from outside the state and which was thereafter shipped outside the state (*United Warehouses and Terminal Corp.*, 112 NLRB 121). It is submitted that the *Breeding* doctrine would likewise apply to hotels as well as warehouses, one dealing in commodities; the other dealing with human beings.

We submit that the proper jurisdictional standards to be applied to the hotel industry is that set forth in *Breeding Transfer Co.*, supra, as follows:

> "We have determined that in future cases the Board will assert jurisdiction over transportation operations or other local activities which constitute a link in the chain of interstate commerce only where the annual income received by the particular company involved from services which constitute a part of interstate commerce total no less than $100,000."

[fol. 18-e] IV

The Anarchical Status of Florida With Regard To Labor Disputes.

The instant case would not have arisen before this Board had Florida provided any means for settling labor disputes involving recognition of bargaining agents. As a corollary, one might add that the National Labor Relations Act itself would not have been passed had every state in the union provided appropriate legislation for the settlement of labor disputes.

The few Florida laws pertaining to labor relations have created a situation that is worse than that found in states where there are no labor law enactments. For example, Section 447.03 provides that employees shall have the right to bargain through collective bargaining agents of their own choosing. No further details or requirements of any nature as to how such bargaining agents shall be selected are supplied. The various courts of the state have willingly furnished the balance of Florida regulations.

The petitioner herein has tried to follow the complex instructions of the courts in 22 injunction cases as to how it must establish its right to represent the striking employees in Miami Beach and a brief summary will illustrate the maze through which these instructions have carried it.

Picketing took place at all 22 hotels, and with only slight deviation, the reason for the picketing was that the employer refused to negotiate with the union. The employers uniformly answered this protest by stating that the union had not proved that it represented a majority of their employees, and that therefore the picketing was illegal. Some of the courts held that any strike activity on the part of the union without first proving to the satisfaction of the employer that the union represented a majority of its employees was illegal. In other cases the courts held that the union was required not only to establish its majority representation, but to give the employer advance notice of its demands and an opportunity to bargain on the same.

When the union tried to comply with these judicial enactments, and prove notice to the employer beyond dis-

[fol. 18-f] pute, a bargaining conference with one of the employers was arranged. The meeting, at which the union presented its proposals, broke up when the employer said. "I can't bargain with you because as a member of the Association I have been directed not to do so." The court then held that such notice to the employer was insufficient since "formal" notice was required to the employer.

When, in other cases, formal written notice to the Association and its Executive Board were proved, the courts held that the notice should have been given to the individual hotels and not to the Association and its Executive Board members even though the particular Executive Board members who received copies of the notice were owners of the hotels involved in the cases at bar. In such cases, the president of the Hotel Association denied that he had notice that the union wished to bargain with him, because when he received it he was acting in his capacity as an Association officer and not as a hotel owner.

Although most of the courts were insistent that we had to prove our representation before being entitled to bargain or to picket for refusal to bargain, none of the courts would state exactly what procedure we were required to follow in order to comply with their edicts. It was sufficient for the courts to find that no matter what we did, we hadn't properly proved our right to represent our members.

For instance, two Supreme Court judges took different positions. One said we had to establish to the satisfaction of the employer that we represented a majority; the other said we had to establish to the satisfaction of the court that we represented a majority. We attempted to do it both ways. We asked the employers to suggest a procedure which would satisfy them, such as a secret election conducted under the auspices of the Governor (who was willing), under the auspices of the Mayor of Miami (who was willing), or by any other public citizens' group whom *they* might select. This was refused. We employed a certified public accountant to check over the personally signed authorization cards and to certify the result, but one court said this didn't prove anything, since the certified public accountant did not see the employees sign the

[fol. 18-g] cards. Then we had the certified public accountant interview each employee and ask him whether his signature on the authorization card was genuine.

Another court found that this was insufficient proof of representation.

Following this, at our next injunction proceeding, we brought before the court all the striking employees, constituting 75% of the hotels' employees. These were sworn, identified as strikers, and they stated under oath that the union represented them. In spite of this, the court found our representation defective and our strike illegal.

The climax of the "Fantasyland" proceedings we followed in Florida came when one judge, attempting to clear a path through the court obstacles, made the following order: Since, said the judge, under the Florida Supreme Court decisions in our cases we had to establish our right to represent the employees, he would order an election to be conducted by a Master Commissioner appointed by the court. And in order that the election might be conducted under the most unprejudicial circumstances, he ordered the union to cease picketing until the election had been completed. Thus, he said, the vote would be conducted in a proper atmosphere free from any coercive influences.

One would have thought that this would have made the hotel concerned happy. The picket line was lifted and machinery was set up for determining representation rights of its employees. Quite the contrary—the employer appealed to the Florida Supreme Court for supersedeas bond to hold up the enforcement of this order pending the hotel's appeal to the Florida Supreme Court on the question of whether the court had the right to make such an order. But the odd thing about the appeal to the Supreme Court was that the owner of the hotel didn't want to supersede the entire order, but only that part of it which applied to the election. He was quite content that that part of the order restraining the picketing until the election could be held, be continued in force. The Florida Supreme Court, however, granted the hotel's request by superseding only that part of the order below providing for an election and leaving the ban on picketing intact.

[fol. 18-h] August 13 of this year will mark the end of four months' strike for more than 3,000 Miami Beach hotel employees. In that time the Miami Beach Hotel Association has fervantly maintained through paid advertisements and other public statements that the union does not represent any of its employees and, therefore, its members will not negotiate with the union. At the same time, these employers have piously repeated that they are not hostile to the union and will negotiate with it when it has proven its right to represent their employees. This has been their position in 28 Circuit Court injunction trials and arguments in 15 Florida Supreme Court cases.

The employers' "double talk" and obvious insincerity throughout the Miami Beach cases was not lost upon all the judges, however. Three judges reached the conclusion expressed in the opinion of Judge Robert L. Floyd that:

> ". . . the representatives of the defendant union did inform the plaintiff of the object to be accomplished by the picketing prior to April 16, 1955, and that the plaintiffs did evade and stall the representatives of the defendant union to an extent that no reasonable man could conclude other than that these evasive tactics were for any other purpose than refusing to negotiate. It is apparent from the record in this cause that the course of conduct engaged in by the plaintiffs after the plaintiffs learned of, and were informed about, the defendant union's desire to negotiate was designed to thwart any attempts by the defendant union to be able to point to any concrete evidence that negotiations were, in fact, refused. It was as though a 'cat and mouse' game was the weapon to be used by the plaintiffs with the ultimate hope that the union's representatives would tire of playing and finally look elsewhere for recreation. This, the union refused to do, however, and the picket line was the result."

[fol. 18-i] The foregoing illustrations are only the barest summary of the legal jungle for the settlement of a labor dispute through which the union has been fighting its way. Many more illustrations could be furnished, such as notifi-

cation to the union at 7:45 on a Saturday evening that an injunction case would be heard at 8:00 the same evening, which continued on until 1:00 A. M. Sunday morning when an injunction was granted restraining picketing; the issuance of a temporary injunction by a court after only one side of the case had been heard, even though the court below had held that plaintiff had not sustained his allegations sufficiently to entitle him to any type of injunction; and the issuance of an injunction by one judge even though the judge who properly had charge of the case already refused to issue an injunction.

The significance of these illustrations in the instant cause is this: The wisdom of Congress in establishing an orderly procedure under the National Labor Relations Act for determining questions of representation is well illustrated in Miami. The necessity for the intervention of a properly qualified body to assume jurisdiction over these otherwise interminable disputes is likewise demonstrated. Florida offers only legalized anarchy for solving labor disputes.

The National Labor Relations Board, operating under well-defined rules of procedure, could in a short time settle these disputes. Otherwise, they are certain to end in an endurance contest of economic strength with thousands of innocent persons and Florida's largest industry suffering the effects of this interruption to commerce.

[fol. 19]

EXHIBIT 1 TO EXHIBIT "A"

THE NEW YORK TIMES, WEDNESDAY, AUGUST 3, 1955.

THE NEW YORK TIMES
Reg. U. S. Pat. Off.
"All the News That's Fit to Print"

Adolph S. Ochs, Publisher 1896-1935

"TAFT-HARTLEY" AND HOTELS

Next Monday the National Labor Relations Board is scheduled to hold a hearing of national interest and im-

portance. The basic issue involved has already aroused the entire labor movement and it also urgently concerns the public: orderly collective bargaining.

The case has grown out of the strike—now in its third month—through which the A. F. L. Hotel and Restaurant Workers Union seeks recognition as bargaining agent for the 6,000 employes of 164 Miami hotels. The employers have refused to agree. Nor is there any Florida law, as in New York and many other states, under which the union could compel such recognition, even if an election showed a majority of the workers involved so desired a procedure which Federal law prescribes for businesses affecting interstate commerce.

In the absence of a Florida law of this kind the union brought an unfair labor practice charge against the hotels under the Taft-Hartley Act. But the Atlanta regional office of the N. L. R. B. refused to accept jurisdiction and the union has appealed to the national board. Next Monday's hearing will give each side its day in court, pending a final decision as to jurisdiction in the case.

The basic technical question involved, of course, is whether the hotel industry—said by the union to be seventh in size, doing a $2.5 billion business with some 500,000 employes—affects interstate commerce within the meaning of the law. But also involved is a growing resentment by labor over actions taken by the present majority of the N. L. R. B. to narrow its own jurisdiction. Minority board member Murdock has estimated that from one-quarter to one-third of the board's past jurisdiction has been eliminated.

[fol. 20] But concern over the situation isn't confined to labor. Senator Lehman has introduced a bill specifically bringing the entire hotel industry within the purview of the Taft-Hartley Act and has brought about an investigation, already begun, of N. L. R. B. policies by a Senate Labor subcommittee. Certainly the operation of the Miami hotels affects interstate commerce. It is equally certain that public policy—and the obvious intent of Congress—call for the widest possible application of orderly collective bargaining guarantees and procedures.

EXHIBIT 3 TO EXHIBIT "A"

(See Opposite)☞

[fol. 21]

Cameraman's Note

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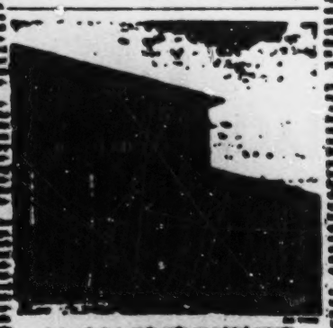
R. 31
JA 22

22

(p. 31)

NTROVERSY OVER LODGE IN E EST

Jackson Hole Hotel Architecture Stirs Debate Over National Parks Design



What a time at the Robert Richter... my vacation is simply wonderful!
...and it only $6*

Had your Vacation yet?
IT ISN'T TOO LATE—IN
Florida
CHAMPION Vacations

RICHTER

Monte Carlo
$7

Special
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Ritz Plaza

San Marino
6

SHORE CLUB
SUMMER
Fiesta

FLY
MIAMI '35
CALIFORNIA '00
CHICAGO... '34

CARIB
2

Sea Gull

31

[fol. 22]

R. 40
JA 23 23

(p. 82)

BRITONS' HOLIDAYS

Paid Vacations in Industry Bring a Big Change in England's Resort Trade

$7 Fabulous
INCLUDING MEALS
Sherry Frontenac
ON THE OCEAN AT 44th ST., MIAMI BEACH

DID YOU SAY 6 50? and WITH MEALS!
SHARE PLAN: $1 Per Person Daily
Sovereign
Swimming Pool • Cabana Club
Private Beach
See Your Travel Agent
DIRECTLY ON THE OCEAN AT 46th STREET—MIAMI BEACH

SUMMER JAMBOREE at the Empress
$7 INCLUDING WONDERFUL MEALS

A HOLIDAY WITH NO HAY FEVER AT THE SEASHORE
The Sorrento
$7 INCLUDING YOUR MEALS
HOME HIGHER

$4 Belmar
AIR CONDITIONED
Free MIAMI BEACH
LOWEST FARE DC-6B
'88 NON-STOP TO '72 CALIFORNIA
MIAMI - 4 hrs. $39
DALLAS $56 • CHICAGO $74
NORTH AMERICAN
NO HAY FEVER!
Saxony
Seven dollars
New Promenade
$27
Allison
$7.50
5 DAYS 6 NIGHTS $22.50
MARSEILLES
RENDALE
$2.50
Versailles
$3
$5
SHELBORNE

~~R. 41~~
~~JA 21~~ 24

(p. 33)

A GLIMPSE OF PRE-TO...AT EUROPE IN SARDINIA

Check List

of late summer attractions in delightful sea-cooled

FLORIDA

TO SEE HOW MUCH YOU GET AT THE

Roney Plaza

MIAMI BEACH

Check this list—

and Double check this—

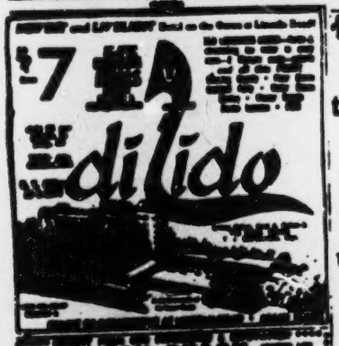
Now Check in at the—

• Luxurious rooms with bath • TV in your room—no charge • Completely air-conditioned—no charge • Complete golf practice facilities • Easy-on private pool • Magnificent Cabana Sun Club • 3 restaurants • Tennis privileges • Pleasant entertainment • Beach parties and dances

• 7 acres of private tropical gardens • 3 city blocks of private beach • Roney's famous cuisine

ROney PLAZA

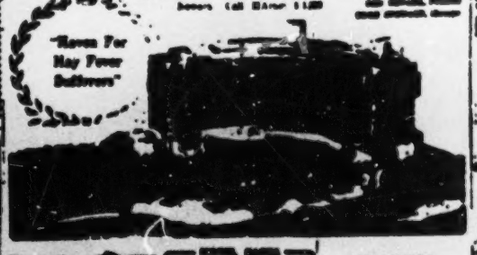
All for Only $5.00 a day

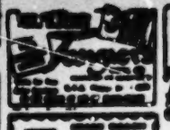


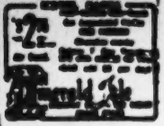
NOW... you can vacation in true magnificence at the incomparable

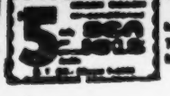
Fontainebleau

unsurpassed luxury...and for so little!









Show Stopper!

$8

Biltmore Terrace

[fol. 24]

[fol. 25]

EXHIBIT 2 TO EXHIBIT "A"

MIAMI DAILY NEWS

Miami 30, Florida Wednesday Evening, March 16, 1955

Equals Business Rivals

TOURIST DOLLAR STILL OUR NO. 1 'BREADWINNER'

By Mac Smith
Miami Daily News Staff Writer

Despite business growth, the economic health of Dade county still depends very much on a $150,000,000 tourist pill swallowed annually in spite of arterial strangulation.

Dr. Reinhold P. Wolff, head of the University of Miami Bureau of Business and Economic Research, today said the tourist industry equals its next two rivals, factories and building, as an income producer.

In releasing the results of the survey of tourism for several years, Dr. Wolff pointed out a number of important changes in South Florida's No. 1 "breadwinner".

He will make a detailed report on what he said were the first figures ever compiled on the complex relationship of tourist trade in our economy at a meeting of the Economic Society of South Florida. The meeting which is open to the public will be at 8 p. m. today at the Florida Power and Light Co. Ryan Bldg., 400 SW 2nd Ave.

Wolff's figures showed that the southeast "Gold Coast" area which gets 52 per cent of Florida's total tourist business still depends on roads to bring it 70 per cent of its winter visitors. But, he pointed out, plane travel is rapidly approaching the automobile as a means of travel to the Miami area.

"Travel Economy"

"We are now in the process of changing from a resort economy to a travel economy," Wolff said. "Tourists don't come to find a resort to spend the winter now. More often they stay a few days to sightsee and travel on to see other places."

[fol. 26] In this respect he speculated that the opening of numerous Caribbean resorts would not hurt Miami's

tourist business as some feared, but would actually help it by making this area a hub of a great travel center.

He said Miami's secondary industries helped it weather last year's recession very well even though he pointed out the area was definitely affected by the decline, especially in travel businesses. His records show factories now rate second in importance in dollar payrolls here producing 80 millions and is followed by building payrolls of 70 million; government, 70 million, and airlines, 60 million.

While factories help equalize the economy, Wolff warned that if they were developed to the extent they have been in Southern California they could harm our important tourist business.

Sets Annual Record

"We don't want to lose what we already have," he said. Each year, at our present rate of growth, the tourist boom sets new records annually.

"That is," Wolff added, "more tourists come to Florida. But there are still some people in the tourist business who are losing money because the competition is so terrific."

EXHIBIT B TO AFFIDAVIT OF JONAS B. KATZ

United States of America—National Labor Relations Board

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

* * * * *

1. Employer Against Whom Charge Is Brought

Name of Employer: Miami Beach Hotel Assn. and (Continued on Attached Sheet)

[fol. 27] Number of Workers Employed: 6000

Address of Establishment (Street and number, city, zone and State):

1 Lincoln Rd., Miami Beach, Fla. & (See Attached Sheet)
Type of Establishment (Factory, mine, wholesaler, etc.):
Hotel
Identify principal product or service: Lodging and/or Food.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.):

See "Exhibit A" attached.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number):

Hotel Employees Union Local No. 255

4. Address (Street and number, city, zone, and State):

1575 Washington Avenue, Miami Beach, Fla.
Telephone No.: Je 8-0539

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization):

Hotel & Restaurant Employees & Bartenders International Union-AFL.

6. Address of National or International, if any (Street and number, city, zone, and State):

525 Walnut Street—Cincinnati, Ohio
Telephone No.: Pa 1-8164

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

ALBERT H. BERLIN,
INTERNATIONAL TRUSTEE

July 6, 1955

[fol. 28]

Name of Employer (continued): and all the Employer members thereof specifically including the following named Employers:

2500 COLLINS AVENUE CORP.
d/b/a ALGIERS HOTEL
2555 Collins Avenue
Miami Beach, Fla.

CASABLANCA OPERATING COMPANY, a partnership composed of Sol Cohen, Sam Cohen, Herbert Robins & Sidney Raffel d/b/a CASABLANCA HOTEL
6345 Collins Avenue
Miami Beach, Fla.

HOTEL DELMONICO INC. d/b/a DELMONICO HOTEL
6393 Collins Avenue
Miami Beach, Fla.

DiLIDO HOTEL INC. d/b/a DiLIDO HOTEL
155 Lincoln Road
Miami Beach, Fla.

INTERNATIONAL COMPANY INC. d/b/a EMPRESS HOTEL
4333 Collins Avenue
Miami Beach, Fla.

STUYVESANT INC. d/b/a LOMBARDY HOTEL
6305 Collins Avenue
Miami Beach, Fla.

MARTINIQUE HOTEL INC. d/b/a MARTINIQUE HOTEL
6423 Collins Avenue
Miami Beach, Fla.

MONTE CARLO INC. d/b/a MONTE CARLO HOTEL
6551 Collins Avenue
Miami Beach, Fla.

SOL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN d/b/a
PRESIDENT MADISON HOTEL
3801 Collins Avenue
Miami Beach, Fla.

BOCA RATON CLUB & HILDEMART CORP.
d/b/a RONEY PLAZA HOTEL
2301 Collins Avenue
Miami Beach, Fla.

LEEVLANS INC. d/b/a
SANS SOUCI HOTEL
3101 Collins Avenue
Miami Beach, Fla.

SAX ENTERPRISES INC. d/b/a
SAXONY HOTEL
3201 Collins Avenue
Miami Beach, Fla.

SEA ISLE HOTEL INC. d/b/a
SEA ISLE HOTEL
3001 Collins Avenue
Miami Beach, Fla.

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING COMPANY, ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY IRREVOCABLE TRUST, MINNIE GINSBERG, JEROME GRANGER d/b/a
SHERRY FRONTENAC HOTEL
6565 Collins Avenue
Miami Beach, Fla.

[fol. 29]

A. H. S. CORPORATION d/b/a
NAUTILUS HOTEL
1825 Collins Avenue
Miami Beach, Fla.

MORRIS LANSBURGH, DANIEL
LIFTER d/b/a ROBERT
RICHTER HOTEL
3301 Collins Avenue
Miami Beach, Fla.

SORRENTO HOTEL CORPORATION d/b/a
SORRENTO HOTEL
4391 Collins Avenue
Miami Beach, Fla.

THOMAS JEFFERSON, INC.
d/b/a SAN MARINO HOTEL
4299 Collins Avenue
Miami Beach, Fla.

GOLDEN GATE HOTEL INC.
d/b/a GOLDEN GATE HOTEL
19400 Collins Avenue
Miami Beach, Fla.

NAME OF EMPLOYER (CONT'D) AND ALL MEMBERS THEREOF AND ESPECIALLY INCLUDING THE FOLLOWING NAMED EMPLOYER MEMBERS:

KIRKEBY HOTEL INC. d/b/a
KENILWORTH HOTEL
10205 Collins Avenue
Miami Beach, Fla.

R. S. LEVY, DANIEL LIFTER &
J J LANSBURGH AS TRUSTEE
FOR THE ELLEN LANSBURGH
TRUST, THE MORRIS LANSBURGH, JR. TRUST AND THE
LEONARD LANSBURGH TRUST
d/b/a VERSAILLES HOTEL
3425 Collins Avenue
Miami Beach, Fla.

HARRY EVANS, ARTHUR
LEWIS, SAM GROSSMAN,
SAM GREENBERG d/b/a
SEA GULL HOTEL
100-21st Street
Miami Beach, Fla.

ISLE DE CAPRI INC. d/b/a
ISLE DE CAPRI HOTEL
7900 Harbor Island
Miami Beach, Fla.

LOUIS ADLER d/b/a
ALLISON HOTEL
6261 Collins Avenue
Miami Beach, Fla.

WOLF MULLER d/b/a
SHORE CLUB HOTEL
1901 Collins Avenue
Miami Beach, Fla.

BANCROFT HOTEL
1501 Collins Avenue
Miami Beach, Fla.

CARIBBEAN HOTEL
3737 Collins Avenue
Miami Beach, Fla.

DR. E. J. MINNELLI d/b/a
SURFCOMBER HOTEL
1717 Collins Avenue
Miami Beach, Fla.

JEROME GRANGER d/b/a
SOVEREIGN HOTEL
4385 Collins Avenue
Miami Beach, Fla.

BEN JAFFE, BEN NOVACK &
HERBERT GLASSMAN d/b/a
FONTAINEBLEAU HOTEL
4441 Collins Avenue
Miami Beach, Fla.

[fol. 30]

EXHIBIT "A"

The Employer Association and the individual hotel members of said Association, acting individually and in concert with each other, have since the 10th day of January, 1955, interfered with, restrained and coerced and continue to interfere with, restrain and coerce employees in the hotel industry in Miami Beach, Florida in the exercise of their rights and guarantees under the Act, and have failed and refused and are now failing and refusing to bargain in good faith with the Hotel Employees Union, Local #255 which labor organization is the duly designated collective bargaining representative of the overwhelming majority of the Employees of the Employer Hotel members of said Association.

The Miami Beach Hotel Association and the individual Hotel Members thereof since the beginning of organizational activity have conspired to flaunt the provisions of the Labor Management Relations Act and to thereby destroy the rights of employees guaranteed under the Act. Said Association and the individual Hotel Member thereof, their officers, agents, and employees, have conspired to and engaged in, and contributed great sums of money to finance an illegal and unlawful plan to:

1. Deliberately violate their lawful obligation and/or obligations to bargain collectively with the collective bargaining representative of their employees; and

2. To interfere with, restrain, and coerce employees in the exercise of their rights.

Set forth below are in part the Acts of the Employer Association and the individual Employer Members thereof in furtherance of said conspiracy:

I

In furtherance of said conspiracy to interfere with, restrain and coerce employees in the exercise of their rights said Employer Hotel Association and all the individual members thereof acting individually and in concert by their officers, agents and employees have discharged hundreds of employees because of their membership in and activity on behalf of Hotel Employees Union Local #255. [fol. 31] Among the hundreds of deliberate acts of discriminatory discharges, the following acts have been committed:

(a) On or about the 18th day of April, 1955, the 2500 COLLINS AVENUE CORPORATION D/B/A ALGIERS HOTEL by its officers, agents and employees discharged CARL HYLLESTED because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(b) On or about the 25th day of May, 1955, the HOTEL DELMONICO, INC., D/B/A DELMONICO HOTEL by its officers, agents and employees discharged CASEY ROSADO because of his membership in and activities for and on behalf of HOTEL EMPLOYES UNION LOCAL #255.

(c) On or about the 25th day of May, 1955, the HOTEL DELMONICO, INC., D/B/A DELMONICO HOTEL by its officers, agents and employees discharged CARLOS ACOSTA because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(d) On or about the 2nd day of April, 1955, the INTERNATIONAL COMPANY, INC., D/B/A EMPRESS HOTEL by its officers, agents and employees discharged HARRY HAINES because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(e) On or about the 23rd day of June, 1955, the FONTAINEBLEAU HOTEL by its officers, agents and employees discharged COSME FERNANDEZ because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(f) On or about the 8th day of May, 1955, the FONTAINEBLEAU HOTEL by its officers, agents and employees discharged HONOREUS GUERIN because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(g) On or about the 26th day of April, 1955, the FONTAINEBLEAU HOTEL by its officers, agents and employees discharged JOHN KETTER because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

[fol. 32] (h) On or about the 24th day of June, 1955, the FONTAINEBLEAU HOTEL by its officers, agents and employees discharged HARRY HAINES because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(i) On or about the 8th day of May, 1955, the FONTAINEBLEAU HOTEL by its officers, agents and employees discharged WALTER MURPHY because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(j) On or about the 15th day of June, 1955, the ISLE DE CAPRI HOTEL by its officers, agents and employees discharged DAVID MORGAN because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(k) On or about the 20th day of June, 1955, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL by its officers, agents and employees discharged WILLIAM RAYNIER because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(l) On or about the 15th day of June, 1955, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL

by its officers, agents and employees discharged CLARENCE ZIGLAR because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(m) On or about the 25th day of May, 1955, SOL COHEN ET AL D/B/A PRESIDENT MADISON HOTEL by its officers, agents and employees discharged BLANCHE WALTERS because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(n) On or about the 10th day of June, 1955, MORRIS LANSBURGH ET AL D/B/A ROBERT RICHTER HOTEL by its officers, agents and employees discharged ELSIE METZGER because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(o) On or about the 26th day of June, 1955, MORRIS [fol. 33] LANSBURGH ET AL D/B/A ROBERT RICHTER HOTEL by its officers, agents and employees discharged EDWARD COX because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(p) On or about the 26th day of June, 1955, MORRIS LANSBURGH ET AL D/B/A ROBERT RICHTER HOTEL by its officers, agents and employees discharged HARRY BARTLEY because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(q) On or about the 10th day of January, 1955, the SAX ENTERPRISES, INC., D/B/A SAXONY HOTEL by its officers, agents and employees discharged BRUCE WATTS because of his membership in and activities for an on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(r) On or about the 25th day of June, 1955, the SEA GULL HOTEL by its officers, agents and employees discharged LEONARD SMITH because of his membership in and activities for an on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(s) On or about the 7th day of June, 1955, R. S. LEVY ET AL D/B/A VERSAILLES HOTEL by its officers, agents, and employees discharged ROSE YASCHALK because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

II

In furtherance of said conspiracy to interfere with, restrain and coerce employees, said Employer Association and all the individual Employer Members thereof, their officers, agents and employees have conspired to refuse employment to and to black-list members of HOTEL EMPLOYEES UNION LOCAL #255 who have engaged in concerted protected activitiy including striking and picketing (as set forth in VI below) at numerous Employer Hotel Members of said Association.

Said Association did set up an employment office at 600 Lincoln Road on or about the 16th day of April, 1955, which employment office is used by said Association and the individual members thereof for the purpose of supplying employees to the various members of said Association. Said office has uniformly refused to give employment or [fol. 34] recommendations for employment to any employees who are members of Hotel Employees Union Local #255 and/or who have been on strike at any of the hotels referred to in Paragraph VI below. Said Association has in its possession a list of said employees who have engaged in said concerted activity which list constitutes a "black-list" from employment in the Miami Beach Hotel Industry.

In furtherance of said conspiracy to black-list members of Local #255 who have been engaged in concerted protected activity said Employer Hotel Association and the individual Hotel Members of said Association set forth below have committed the following acts:

(a) On or about the 29th day of June, 1955, the aforementioned Hotel Employment Agency refused to give employment or reference to HERBERT SCHIFFMAN and AMANDO VAZQUEZ because of their membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(b) On or about the 30th day of June, 1955, the 2500 COLLINS AVENUE CORPORATION, D/B/A ALGIERS HOTEL, by its officers, agents and employees did refuse to hire and employ (Miss) WOODROW COKER because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

(c) On or about the 16th day of April, 1955, the BANCROFT HOTEL by its officers, agents and employees did refuse to hire and employ ANNA REYNOLDS because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of her status as a striker at the MONTE CARLO HOTEL.

(d) On or about the 16th day of April, 1955, the BANCROFT HOTEL by its officers, agents and employees did refuse to hire and employ NATHAN KELLY because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of his status as a striker at the MONTE CARLO HOTEL.

[fol. 35] (e) On or about the 15th day of June, 1955, the CARIBBEAN HOTEL by its officers, agents and employees did refuse to hire and employ HARRY HAINES because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially said activities at the EMPRESS HOTEL.

(f) On or about the 1st day of July, 1955, the INTERNATIONAL COMPANY, INC., D/B/A EMPRESS HOTEL by its officers, agents and employees did refuse to hire and employ (Miss) WOODROW COKER because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

(g) On or about the 14th day of June, 1955, the FONTAINEBLEAU HOTEL by its officers, agents

and employees did refuse to hire and employ LEO DANIELS because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

(h) On or about the 7th day of June, 1955, the FONTAINEBLEAU HOTEL by its officers, agents and employees did refuse to hire and employ ETHEL AGID because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the SAXONY HOTEL.

(i) On or about the 5th day of June, 1955, the FONTAINEBLEAU HOTEL by its officers, agents and employees discharged SAM MANSOUR because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the SAXONY HOTEL.

(j) On or about the 1st day of June, 1955, the GOLDEN GATE HOTEL by its officers, agents and employees did refuse to hire and employ JOSEPH MULESKEY because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

[fol. 36] (k) On or about the 16th day of June, 1955, the KENILWORTH HOTEL by its officers, agents and employees did refuse to hire and employe BEATRICE HUTCHINSON because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the SEA ISLE HOTEL.

(l) On or about the 10th day of June, 1955, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL by its officers, agents and employees discharged MIKE FILLOT because of his membership in and activities for and on behalf of HOTEL EM-

PLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

(m) On or about the 27th day of April, 1955, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL by its officers, agents and employees discharged LEO DANIELS because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

(n) On or about the 22nd day of April, 1955, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL by its officers, agents and employees did refuse to hire and employ RON MENDORF because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

(o) On or about the 5th day of June, 1955, the SAX ENTERPRISES, INC., D/B/A SAXONY HOTEL by its officers, agents and employees did refuse to hire and employ KENNETH PERGONTIS because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the DiLIDO HOTEL.

(p) On or about the 4th day of June, 1955, the SEA GULL HOTEL by its officers, agents and employees did refuse to hire and employ ARNOLD KIRSHNER [fol. 37] because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the DiLIDO HOTEL.

(q) On or about the 18th day of April, 1955, the SEA GULL HOTEL by its officers, agents and employees discharged ELIZABETH PETERSON because of her membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL

#255 and especially because of said activities at the ALGIERS HOTEL.

(r) On or about the 16th day of April, 1955, the SEA GULL HOTEL by its officers, agents and employees did refuse to hire and employ GEORGE DELEHAGEN because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

(s) On or about the 25th day of May, 1955, the A. H. S. CORPORATION, D/B/A NAUTILUS HOTEL by its officers, agents and employees did refuse to hire and employ SAM MANSOUR because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the SAXONY HOTEL.

(t) On or about the 1st day of May, 1955, the SURFCOMBER HOTEL by its officers, agents and employees, did refuse to hire and employ SAM MANSOUR because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the SAXONY HOTEL.

(u) On or about the 7th day of May, 1955, the SURFCOMBER HOTEL by its officers, agents and employees did refuse to hire and employ MEL SMITH because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the SAXONY HOTEL.

(v) On or about the 1st day of June, 1955, the SOVEREIGN HOTEL by its officers, agents and employees did refuse to hire and employ JOSEPH LIEBERMAN because of his membership in and [fol. 38] activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the SAXONY HOTEL.

(w) On or about the 29th day of June, 1955, R. S. LEVY ET AL, D/B/A VERSAILLES HOTEL by its officers, agents and employees did refuse to hire and employ EUGENE FENYOU because of his membership in and activities for and on behalf of HOTEL EMPLOYEES UNION LOCAL #255 and especially because of said activities at the CASABLANCA HOTEL.

III

In furtherance of said conspiracy to interfere with, restrain and coerce employees in the exercise of their rights the Employer Association and the individual members thereof acting individually and in concert and conspiracy with each other by their officers, agents and employees have committed physical acts of violence against employee members of Hotel Employees Union Local #255 while said employees were engaged in peaceful picketing of the various Hotel Members of said Association. Some of these acts of physical violence are as follows:

(a) On or about April 19, 1955, the CASABLANCA, INC., D/B/A the CASABLANCA HOTEL, by its agent and employees, JOFFRE NASSAUER, did violently assault without provocation ABRAHAM (AL) COHEN while said COHEN was peacefully engaged in acting as picket captain in front of said CASABLANCA HOTEL. Said employer did thereupon by its agent and employee falsely prosecute criminal charge against said COHEN, which charges are now pending.

(b) On or about the 20th day of April, 1955, HARRY LEVY ET AL D/B/A SHERRY FRONTENAC by its agents and employees, AMANDO PEREZ, WASHINGTON PEREZ and one CASTELLANI did physically and violently assault one, HERMAN SEROTA, a member of HOTEL EMPLOYEES UNION LOCAL #255 while said SEROTA was engaged in peacefully picketing said SHERRY FRONTENAC HOTEL.

[fol. 39] (c) On or about the 8th day of May, 1955, the DILIDO HOTEL, INC. by one of its principal

officers, THEODORE COHEN, did assault at gun point one JOSEPH BRUNWASSER, a member of HOTEL EMPLOYEES UNION LOCAL #255 while said BRUNWASSER was engaged in peacefully picketing said hotel and did force said employee at the point of a gun to cease picketing and accompany him inside the hotel.

(d) On or about the 5th day of May, 1955, the INTERNATIONAL COMPANY, INC., D/B/A EMPRESS HOTEL by its agent and employee, JACK McCORMICK at the direction of its officers did physically and violently assault one, JOSE BERROJO, a member of said HOTEL EMPLOYEES UNION LOCAL #255 while said BERROJO was peacefully picketing the premises of the EMPRESS HOTEL. Said Employer thereafter caused the arrest of said BERROJO for engaging in said peaceful concerted activity.

(e) On or about the 8th day of May, 1955, the INTERNATIONAL COMPANY, INC., D/B/A EMPRESS HOTEL by its agent and employee, JACK MULLALY, at the direction of its officers did physically and violently assault one, PRINCIPADO FELICIANO, a member of said HOTEL EMPLOYEES UNION LOCAL #255 while said FELICIANO was peacefully picketing the premises of the EMPRESS HOTEL. Said Employer thereafter caused the arrest of said FELICIANO for engaging in said peaceful concerted activity.

(f) On or about the 9th day of May, 1955, the INTERNATIONAL COMPANY, INC., D/B/A EMPRESS HOTEL by its agent and employee, HOWARD LOCKWOOD, at the direction of its officers, did physically and violently assault one, JACK HAGEDORN, a member of said HOTEL EMPLOYEES UNION LOCAL #255 while said HAGEDORN was peacefully picketing the premises of the EMPRESS HOTEL. Said Employer thereafter caused the arrest of said HAGEDORN for engaging in said peaceful concerted activity.

(g) On or about the 9th day of May 1955 the INTERNATIONAL COMPANY, INC. D/B/A EMPRESS HOTEL by its agent and employee, JOE LEE [fol. 40] KING, at the direction of its officers did physically and violently assault one, ROY MESSLER, a member of said HOTEL EMPLOYEES UNION LOCAL #255 while said MESSLER was peacefully picketing the premises of the EMPRESS HOTEL. Said employer thereafter caused the arrest of said MESSLER for engaging in said peaceful concerted activity.

(h) On or about the 12th day of May 1955 the INTERNATIONAL COMPANY, INC. D/B/A EMPRESS HOTEL by its agent and employee, JOE LEE KING, at the direction of its officers did physically and violently assault one, PRINCIPADO FELICIANO, a member of said HOTEL EMPLOYEES UNION LOCAL #255 while said FELICIANO was peacefully picketing the premises of the EMPRESS HOTEL. Said Employer thereafter caused the arrest of said FELICIANO for engaging in said peaceful concerted activity.

(i) On or about the 5th day of May, 1955, and thereafter the INTERNATIONAL COMPANY, INC., D/B/A EMPRESS HOTEL by its principal officer, ISIDORE KOWAL, did attempt to seriously injure employees engaged in peacefully picketing said EMPRESS HOTEL by having said KOWAL drive his Cadillac Sedan at a high rate of speed in and around said hotel in such a manner as to deliberately attempt to run down pickets peacefully exercising their rights.

IV

In furtherance of said conspiracy to interfere with, restrain and coerce employees in the exercise of their rights the Employer Association and the individual members thereof individually and in concert and conspiracy with each other by their officers, agents and employees have interrogated employees as to their membership in and activities for and on behalf of HOTEL EMPLOYEES

UNION LOCAL #255. The Employer Association has demanded that employees sign statements disclaiming membership in HOTEL EMPLOYEES UNION LOCAL #255 as a condition of continued employment and have [fol. 41] threatened to and have discharged and discriminated against employees who have refused to execute said statements. The Employer Member Hotels which have committed the aforementioned acts are:

ALLISON HOTEL
MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL
SEA ISLE, INC., D/B/A SEA ISLE HOTEL
SEACOMBER HOTEL
SURFCOMBER HOTEL
SHORE CLUB HOTEL

In furtherance of said conspiracy said Employer Hotels have committed the following acts of discrimination:

(a) On June 25th, 1955, the ALLISON HOTEL by its officers, agents and employees discharged KATHERINE VELLER because of her refusal to sign the aforementioned statements disclaiming membership in HOTEL EMPLOYEES UNION LOCAL #255.

(b) On June 5th, 1955, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL by its officers, agents and employees discharged KAY BUTLER because of her refusal to sign the aforementioned statements disclaiming membership in HOTEL EMPLOYEES UNION LOCAL #255.

(c) On June 27th, 1955, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL by its officers, agents and employees discharged LAWRENCE O'CONNOR because of her refusal to sign the aforementioned statements disclaiming membership in HOTEL EMPLOYEES UNION LOCAL #255.

V

In furtherance of said conspiracy to interfere with, restrain and coerce employees in the exercise of their rights

the Employer Association and the individual members thereof acting individually and in conspiracy with each other by their officers, agents and employees did on or about June 9, 1955, cause mass arrests of Employee Members of HOTEL EMPLOYEES UNION LOCAL #255 because said employees were engaged in peacefully picketing the premises of the employers. Said arrests were made [fol. 42] without cause or provocation by the Miami Beach Police Department on orders of its Police Chief.

Each of said employees arrested was forcibly taken to the Miami Beach Police Station and was required to post bond in the sum of $100.00. On trial said charges of loitering were determined to be unfounded and said acts of the said Association, the individual members thereof, and the Miami Beach Police Department did interfere with, restrain and coerce employees in the exercise of their rights.

VI

On or about March 3rd, 1955, and thereafter the Employer Association failed and refused to bargain or meet with and continues to refuse to bargain or meet with the representatives of said HOTEL EMPLOYEES UNION LOCAL #255 which has at all times represented a majority of the employees of the Employer Members of said Association. Repeated efforts on behalf of the representatives of HOTEL EMPLOYEES UNION LOCAL #255 to meet with the Employer Association representatives have been met with false, evasive and misleading representations by said Association.

In view of the said Association's refusal to bargain with HOTEL EMPLOYEES UNION LOCAL #255 said UNION requested bargaining from the individual Hotel Members of said Association. In furtherance of said conspiracy to refuse to bargain with said UNION, the employers hereinafter appearing, acting individually and in concert with each other and said Association, followed the identical pattern of: (1) Refusing to bargain and: (2) Immediately thereafter instituting Court Proceedings as set forth below:

(a) On or about the 1st day of April, 1955, SAX ENTERPRISES, INC., D/B/A the SAXONY HO-

TEL failed and refused to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 and continues to refuse to bargain with said UNION although said UNION has at all times represented an overwhelming majority of the employees of said hotel.

On or about the 13th day of April, 1955, in protest [fol. 43] of said employer's unlawful refusal to bargain, an overwhelming majority of said employees engaged in concerted protected activity, to wit: striking and picketing at said hotel.

On or about the 15th day of April, 1955, the said SAXONY HOTEL in furtherance of a pre-determined plan, in concert and conspiracy with said Association and the Hotel-Members thereof to interfere with, coerce and restrain its employees, filed a false and misleading Complaint in the Circuit Court of Dade County, Florida, wherein said Employer requested said Court to enjoin and restrain, under threat of imprisonment and fine, the said concerted protected activity of the employees of the SAXONY HOTEL.

On or about the 11th day of May, 1955, the said Circuit Court refused to restrain said activity and said Employer in furtherance of said plan immediately thereafter petitioned the Supreme Court at Tallahassee, Florida, to restrain and enjoin said protected activity. On the 28th day of May, 1955, said Court did enter an order directing the said Circuit Court to restrain and enjoin said activity thereby restraining and coercing the employees in the exercise of their clear statutory rights. Said order remains in effect and continues to interfere with, restrain and coerce employees through threat of imprisonment and fine from the exercise of their rights under the Act.

(b) On or about the 1st day of April, 1955, and thereafter the BOCA RATON CLUB, INC., D/B/A BONEY PLAZA HOTEL; the LEEVLANS CORPORATION, D/B/A SANS SOUCI HOTEL; HARRY LEVY, ET AL, D/B/A SHERRY FRONTENAC HOTEL; the SORRENTO HOTEL CORPORATION, D/B/A SORRENTO HOTEL; the 2500 COLLINS

AVENUE CORPORATION, D/B/A ALGIERS HOTEL and MONTE CARLO, INC., D/B/A MONTE CARLO HOTEL, individually and in concert and conspiracy with each other, with said Association, and with all other members thereof individually and separately failed and refused and continue to fail and refuse to bargain or meet with said HOTEL EMPLOYEES UNION LOCAL #255 which UNION [fol. 44] was and is now the duly designated collective bargaining representative of an overwhelming majority of the employees of each respective hotel.

In protest of said individual unlawful refusal to bargain, the overwhelming majority of employees of each of the respective aforementioned hotels did, between the 13th day of April, 1955 and the 21st day of April, 1955, engage in concerted activity of striking and picketing of the respective hotels.

Thereupon said hotels in furtherance of a predetermined plan and in further interference with, restraint and coercion of its employees did file separate complaints in the Circuit Court of Dade County, Florida, which complaints were in essence identical to the complaint referred to in the above paragraph (a) and which sought to restrain and enjoin said concerted activity and picketing under threat of imprisonment and fines. On or about the 11th day of May, 1955, said Court refused to enjoin said individual picketing at said hotels and thereafter said employers in furtherance of said conspiracy individually and in concert did petition the Supreme Court of Florida to restrain and enjoin said concerted activity. On or about the 2nd day of June, 1955, said Honorable Supreme Court did enter an order enjoining said protected activity pending further determination by the said Circuit Court of matters within the purview of the Act.

On or about the 17th day of June, 1955, the said Circuit Court did make said determination in accordance with said order of the Supreme Court and thereupon dissolved the aforementioned order. Thereafter, said employers again, in furtherance of said con-

spiracy, did petition the Supreme Court of Florida for a stay of said dissolution which stay was granted by said Supreme Court on the 24th day of June, 1955, thereby further interfering with, restraining and coercing the employees of the respective employers under threat of imprisonment and fine in exercising their rights under the Act. The said order restraining and enjoining the concerted activity of the employees of [fol. 45] the aforementioned Hotels is still in full force and effect and continues to interfere with, restrain and coerce employees in the exercise of their rights under the Act.

(c) On or about the 1st day of April, 1955, and thereafter, the SEA ISLE HOTEL, INC., D/B/A THE SEA ISLE HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255, which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 22nd day of April, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255, the overwhelming majority of said employees engaged in concerted protected activity, to wit: striking and picketing.

On or about the 25 day of April, 1955, the employer, in concert and conspiracy as set forth above, did file a complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 7th day of May, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing said employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues to interefere with, restrain and coerce employees in the exercise of their rights. In further interference of the rights of employees said SEA ISLE HOTEL did, on or about the 14th day of May, 1955, file in said Court Motions for Orders to Show Cause why certain of said employees should not be held in con-

tempt of said Court by reason of having allegedly participated in said protected activity, thereby further interfering with, restraining and coercing employees as set forth above.

(d) On or about the 1st day of April, 1955, and thereafter, the CASABLANCA OPERATING CO., a partnership D/B/A CASABLANCA HOTEL, failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL [fol. 46] #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 16th day of April, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 the overwhelming majority of said employees engaged in concerted protected activity, to wit: striking and picketing.

On or about the 18th day of April, 1955, the employer in concert and conspiracy as set forth above did file a Complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 7th day of May, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues to interfere with, restrain and coerce employees in the exercise of their rights.

(e) On or about the 1st day of April, 1955, and thereafter the INTERNATIONAL COMPANY, INC., D/B/A EMPRESS HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 2nd day of May, 1955, in protest of the employer's unlawful refusal to bargain with

said HOTEL EMPLOYEES UNION LOCAL #255 the overwhelming majority of said employees engaged in concerted protected activity to wit: striking and picketing.

(f) On or about the 17th day of May, 1955, and thereafter the HOTEL DELMONICO, INC., D/B/A DELMONICO HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

[fol. 47] On or about the 27th day of May, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 said UNION engaged in concerted protected activity, to wit: picketing.

Thereafter the employer in concert and conspiracy as set forth above did file a Complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 16th day of June, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues to interfere with, restrain and coerce employees in the exercise of their rights.

(g) On or about the 12th day of April, 1955 and thereafter the DiLIDO HOTEL, INC., D/B/A DiLIDO HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 4th day of May, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 the overwhelming majority of said employees engaged

in concerted protected activity, to wit: striking and picketing.

On or about the 10th day of May, 1955 the employer in concert and conspiracy as set forth above did file a Complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 26th day of May, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues to interfere with, restrain and coerce employees in the exercise of their rights.

[fol. 48] (h) On or about the 3rd day of May, 1955 and thereafter, the STUYVESANT CORP., D/B/A LOMBARDY HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 6th day of May, 1955, said hotel discharged three employees because of their activity on behalf of HOTEL EMPLOYEES UNION LOCAL #255.

On or about the 6th day of May, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255, and the discharge of said employees, the overwhelming majority of said employees engaged in concerted protected activity, to wit: striking and picketing.

On or about the 10th day of May, 1955, the employer in concert and conspiracy as set forth above did file a Complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 2nd day of June, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues

to interfere with, restrain and coerce employees in the exercise of their rights.

(i) On or about the 2nd day of June, 1955, and thereafter, the MARTINIQUE HOTEL, INC., D/B/A MARTINIQUE HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 8th day of June, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 said UNION engaged in concerted protected activity, to wit: picketing.

[fol. 49] On or about the 5th day of June, 1955, the employer in concert and conspiracy as set forth above did file a Complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 17th day of June, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues to interfere with, restrain and coerce employees in the exercise of their rights.

(j) On or about the 17th day of May, 1955, and thereafter, SOL COHEN ET AL, D/B/A PRESIDENT MADISON HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 31st day of May, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 said UNION engaged in concerted protected activity, to wit: striking and picketing.

On or about the 8th day of June, 1955, the employer in concert and conspiracy as set forth above did file a Complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 16th day of June, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues to interfere with, restrain and coerce employees in the exercise of their rights.

(k) On or about the 20th day of May, 1955, and thereafter MORRIS LANSBURGH ET AL, D/B/A ROBERT RICHTER HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated col-
[fol. 50] lective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 31st day of May, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 and discriminatory discharge of employees as set forth below, said UNION engaged in concerted protected activity, to wit: picketing.

On or about the 9th day of June, 1955, the employer in Concert and conspiracy as set forth above did file a complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. On or about the 16th day of June, 1955, said Circuit Court did restrain and enjoin said protected activity thereby interfering with, restraining and coercing employees in the exercise of their rights under the Act. Said order is still in full force and effect and continues to interfere with, restrain and coerce employees in the exercise of their rights.

(l) On or about the 8th day of June, 1955, and thereafter, THOMAS JEFFERSON, INC., D/B/A SAN MARINO HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL

EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 15th day of June, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 said UNION engaged in concerted protected activity, to wit: picketing.

On or about the 17th day of June, 1955, the employer in concert and conspiracy as set forth above did file a Complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. Said complaint is now pending before said Court, thereby continuing to restrain, coerce and interfere with employees in the exercise of their rights.

(m) On or about the 1st day of April, 1955, and [fol. 51] thereafter R. S. LEVY ET AL, D/B/A VERSAILLES HOTEL failed and refused and continues to fail and refuse to bargain with the HOTEL EMPLOYEES UNION LOCAL #255 which UNION was then and is now the duly designated collective bargaining representative of an overwhelming majority of employees of said hotel.

On or about the 11th day of June, 1955, in protest of the employer's unlawful refusal to bargain with said HOTEL EMPLOYEES UNION LOCAL #255 said UNION engaged in concerted protected activity, to wit: picketing.

Thereafter the employer in concert and conspiracy as set forth above did file a complaint in the Circuit Court of Dade County seeking to restrain and enjoin said protected activity. Said complaint is now pending before said Court thereby continuing to restrain, coerce and interfere with employees in the exercise of their rights.

By the above acts and other acts the Employer Association and the individual members thereof, acting individually and in concert and conspiracy with each other, have flagrantly and deliberately interfered with, restrained

and coerced their employees, and have failed and refused to bargain with the duly designated collective bargaining representative of said employees, all in violation of the Labor Management Relations Act, as amended, and in particular Sections 8(a)(1)(3) and (5);

* * * * * * *

In United States District Court

Motion of Plaintiffs for Summary Judgment in Their Favor—Filed January 8, 1957

Come now the plaintiffs, by their attorneys, and move that summary judgment for plaintiffs be granted herein on the basis of the complaint and all other documents filed in this cause.

Wherefore, it is respectfully requested that the relief requested in plaintiffs' Complaint be granted.

Attorneys for Plaintiffs
Brown & Gettler, /s/ Ben Guth, 1505 Fountain Square Bldg., Cincinnati 2, Ohio.
[fol. 52] John E. McCarty, 812 Fifteenth St., N. W., Washington, D. C.

Affidavit in Support of Motion—Filed January 8, 1957

State of Ohio,
County of Hamilton, ss.:

J. W. Brown, being duly cautioned and sworn, deposes and states that he is and has been at all times material herein the General Counsel of the Hotel & Restaurant Employees and Bartenders International Union and that as such he is familiar with the proceedings involving the National Labor Relations Board, the Miami Beach Hotel Owners Association, Inc., and the Vanderbilt Hotel, which occurred on and after April 6, 1949.

Affiant further states that an unfair labor practice charge was filed by Local 133 of said International Union; that said charge was investigated; that as a result thereof

a complaint was issued against the aforementioned employers and that as a result thereof Stipulations and Settlement Agreements were entered into between the appropriate officers of the National Labor Relations Board and each of said employers; and that a copy of each of said Stipulations and Settlement Agreements is attached hereto and made a part hereof.

Further affiant saith naught.

/s/ J. W. Brown

[fol. 53]

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
TENTH REGION

Case No. 10-CA-577

In the Matter of

VANDERBILT HOTEL CORPORATION, MIAMI BEACH HOTEL OWNERS ASSOCIATION, INC. AND SAMUEL KAPLAN, An Individual,

and

HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' UNION, LOCAL #133.

STIPULATION

It is hereby stipulated and agreed by and between Miami Beach Hotel Owners Association, Inc., (herein called Respondent Association), by Alexander S. Gordon, its Attorney; Samuel Kaplan, an individual (herein called respondent Kaplan), by Alexander S. Gordon, his Attorney; Hotel & Restaurant Employees' and Bartenders' Union, Local #133, by Clyde Foster, its Secretary-Treasurer, and Frank E. Hamilton, Jr., and George L. Weasler, Counsel for the General Counsel, National Labor Relations Board, Tenth Region, that:

I

Upon a Fourth Amended Charge in Case No. 10-CA577, filed by Hotel & Restaurant Employees' & Bartenders' Union, Local #133 (herein called the Union), the General Counsel of the National Labor Relations Board, acting on behalf of the National Labor Relations Board (herein called the Board), and pursuant to Section 10 (b) of the National Labor Relations Act, 61 Stat. 136 (herein called the Act), has caused the Regional Director for the Tenth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, to issue its Complaint and Notice of Hearing thereon dated the 6th day of April, 1949, against Vanderbilt Hotel Corporation, Miami Beach Hotel Owners Association and Samuel Kaplan, an individual (herein collectively called the respondent).

On or about April 7, 1949, the Fourth Amended Charge, [fol. 54] Complaint, and Notice of Hearing, were duly served by registered mail on all parties hereto, and the receipt and service of the same are hereby acknowledged.

II

Respondent, the Miami Beach Hotel Owners Association, Inc., is, and has been at all times material herein, a nonprofit corporation duly organized under and existing by virtue of the laws of the State of Florida, composed of a substantial number of Miami Beach, Florida hotel owners, maintaining its principal office and place of business at Miami Beach, Florida where it is now and has been at all times material herein engaged in representing, promoting and further advancing the individual and collective business interests of its members.

III

Respondent Kaplan is, and at all times material herein has been, Executive Director of Respondent Association.

IV

For the purpose of this case only, Respondent Miami Beach Hotel Owners Association, Inc., and Respondent

Kaplan admit that Respondent Vanderbilt Hotel Corporation, herein called Respondent Hotel is engaged in interstate commerce within the meaning of the Act, and is subject to the jurisdiction of the Board. Neither this admission nor anything else in this stipulation shall prejudice or operate as a waiver of Respondent Miami Beach Hotel Owners Association, Inc. and Respondent Kaplan's right to contest jurisdiction in any other unfair labor practice charge or complaint.

V

Hotel & Restaurant Employees' and Bartenders' Union, Local #133, affiliated with the Hotel & Restaurant Employees' and Bartenders' International Union, AFL, is a labor organization within the meaning of Section 2 (S) of the Act.

VI

This stipulation, together with the Fourth Amended charge, complaint, notice of hearing thereon, and the stipulation entered into by and between Respondent Hotel, the Union and Counsel for the General Counsel, dated [fol. 55] April 14, 1949, may be filed with the Chief Trial Examiner of the Board at Washington, D. C. and when so filed shall constitute the entire record herein.

VII

The taking of testimony or the submission of further evidence, and the making of findings of fact and conclusions of law by the Board, pursuant to the provisions of the Act, are hereby expressly waived by the parties hereto, and the Board's Order as herein provided, shall have the same force and effect as if made after a full hearing, presentation of evidence, and the makings of findings thereon.

VIII

Upon this stipulation and the record herein set forth in paragraph VI above, the Board may enter and (sic) order providing as follows:

(a) Miami Beach Hotel Owners Association, Inc., its officers, agents, successors, and assigns and Samuel Kaplan, an individual, Respondents herein acting in the interest of Respondent Vanderbilt Hotel Corporation, or any other employer, shall:

1. Cease and desist from threatening to blacklist members of the Hotel & Restaurant Employees' and Bartenders' Union, Local #133, or any other labor organization, and to prevent them from finding or obtaining employment at other hotels in Miami Beach, Florida.

2. Cease and desist from in any other manner interfering with, restraining, or coercing the employees of the Vanderbilt Hotel Corporation, or of any other employer in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

3. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Immediately send notices attached as "Appendix A" in writing, through the United States mails, to all its members as well as Vanderbilt Hotel Corporation and to all employees of Vanderbilt Hotel Corporation, stating [fol. 56] that it will not engage in the conduct from which it is ordered to cease and desist in paragraphs (a) 1, and (a) 2, of this order;

(b) Notify the Regional Director for the Tenth Region in writing within ten (10) days from the date the order is entered in this case of the steps the Respondents, Samuel Kaplan and Miami Beach Hotel Owners Association taken to comply herewith.

IX

It is agreed that upon application by the Board, the United States Court of Appeals for the Fifth Circuit, or any other appropriate United States Court of Appeals,

may enter its Decree, enforcing the Order of the Board hereinabove set forth, and all parties hereto expressly waive all rights and privileges to receive further notice of the filing of an application for the entry of such Decree or to contest the entry of such Decree, provided that a copy shall be served upon the Respondents after its entry.

X

The Respondents will comply with the provisions set forth in paragraph VIII (a) @, (sic) 2 and 3 (a) above, immediately upon approval of this Stipulation by the Board.

XI

This Stipulation is subject to the approval of the Board.

XII

This Stipulation contains the entire agreement of the parties and there is no agreement of any kind which waives, alters, or adds to this Stipulation.

In Witness Whereof the parties hereto have set their hands on the dates and at the places written opposite their names.

Dated this 15th day of April, 1949,
at Miami Beach, Florida.

By /s/ Alexandor S. Gordon, Its Attorney.

Dated this 15th day of April, 1949,
at Miami Beach, Florida.

[fol. 57] Samuel Kaplan, by /s/ Alexander S. Gordon, His Attorney.

Dated this 18th day of April, 1949,
at Miami, Florida.

Hotel & Restaurant Employees' and Bartenders' Union, Local #133, affiliated with Hotel & Restaurant Employees' and Bartenders' International Union, A. F. L., by /s/ Clyde Foster, Its Secretary-Treasurer.

Dated this 15th day of April, 1949,
at Miami Beach, Florida.

By /s/ Frank E. Hamilton, Jr., Counsel for the General Counsel, National Labor Relations Board, Tenth Region.

By /s/ George L. Weasler, Counsel for the General Counsel, National Labor Relations Board, Tenth Region.

Miami Beach Hotel Owners Ass'n.
1655 Drexel Avenue
Miami Beach, Fla.

"APPENDIX A"

Re: Vanderbilt Hotel Corporation, Miami Beach Hotel Owners Association, Inc., and Samuel Kaplan, an individual

and

Hotel & Restaurant Employees' and Bartenders' Union, Local #133

To All Members of the Miami Beach Hotel Owners Association, Inc., Miami Beach, Florida, and Employees of the Vanderbilt Hotel Corp.

Dear Sir:

Pursuant to a stipulation providing for a decree of the United States Court of Appeals enforcing a decision and [fol. 58] order of a National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Board, we hereby notify members of the Association that the Association, its officers, agents and Samuel Kaplan, will not threaten to blacklist members of the Hotel & Restaurant Employees' and Bartenders' Union, Local #133 or any other labor organization, or prevent them

from finding or obtaining employment at hotels in Miami Beach, Florida.

The Association, its officers and agents and Mr. Samuel Kaplan will not in any other manner interfere with, restrict or coerce the employees of the Vanderbilt Hotel Corporation or any other employer, in the exercise of the rights to self-organization to form, join or assist Labor organizations to bargain collectively with representatives of their choosing and to engage in concerted activity for the purpose of collective bargaining or other mutual aid and protection as guaranteed in section 7 of the Act.

Sincerely,

SAMUEL KAPLAN
Executive Secretary
Miami Beach Hotel Owners Ass'n.

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* * * * * * *

STIPULATION

It is hereby stipulated and agreed by and between Vanderbilt Hotel Corporation (herein called Respondent Hotel) by Morris Lansburgh; Hotel & Restaurant Employees' and Bartenders' Union, Local #133, by Clyde Foster, its Secretary-Treasurer, and Frank E. Hamilton, Jr., and George L. Weasler, Counsel for the General Counsel, National Labor Relations Board, Tenth Region, that:

1.

Upon a Fourth Amended Charge in Case No. 10-CA-577, filed by Hotel & Restaurant Employees' & Bartenders' Union, Local #133 (herein called the Union), the General Counsel of the National Labor Relations Board, acting on behalf of the National Labor Relations Board (herein [fol. 59] called the Board), and pursuant to Section 10 (b) of the National Labor Relations Act, 61 Stat. 136 (herein called the Act), has caused the Regional Director for the Tenth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, to issue its Complaint and Notice of Hear-

ing thereon dated the 6th day of April, 1949, against Vanderbilt Hotel Corporation, Miami Beach Hotel Owners Association and Samuel Kaplan, an individual (herein collectively called the respondent).

On or about April 7, 1949, the Fourth Amended Charge, Complaint, and Notice of Hearing, were duly served by registered mail on all parties hereto, and the receipt and service of the same are hereby acknowledged.

II.

Respondent Hotel, is, and at all times material herein has been, a corporation duly organized under the existing (sic) by virtue of the laws of the State of Florida, having its principal office and place of business located at Miami Beach, Florida (herein called the Miami Beach Hotel), where it is now and has been at all times material herein, engaged in providing hotel accomodations (sic) and services to customers for profit.

III.

Respondent Hotel in the course and conduct of its business operations at all times material herein, does and has done a total gross volume of business of approximately $500,000.00 annually, and engages in and causes, and has engaged in and caused, the following transactions which substantially affect foreign and interstate commerce:

(a) Providing hotel accomodations (sic) and services for a large number of customers, of whom more than 90 percent reside outside the State of Florida and travel on agencies engaged in foreign and interstate commerce from and through foreign countries and the states of the United States other than the State of Florida, to the Miami Beach Hotel, and more than 90 percent travel on agencies engaged in foreign and interstate commerce from the Miami Beach Hotel, to foreign countries and states of the United States other than the State of Florida;

[fol. 60] (b) Furnishing a part of its space and services to travel agencies, located outside the State of

Florida, which include the facilities and services of the Miami Beach Hotel as part of the total services furnished to their customers traveling in foreign and interstate commerce on tours organized and sponsored by the travel agencies;

(c) Purchasing supplies and equipment in substantial quantities, a large percentage of which originates outside the State of Florida, and is shipped in interstate commerce to the Miami Beach Hotel.

(d) Causing a substantial amount of advertising to be published and printed in newspapers and magazines which are published and distributed in states of the United States other than the State of Florida;

(e) Soliciting customers who reside in states of the United States other than the State of Florida by mailing circulars and advertisements to them from the Miami Beach Hotel;

(f) Mailing and shipping quantities of advertising matter to travel agencies located outside the State of Florida for distribution in states of the United States other than the State of Florida;

(g) Receiving for its customers substantial quantities of baggage and supplies which are shipped in foreign and interstate commerce to the Miami Beach Hotel;

(h) Leasing space in its buildings at Miami Beach, Florida to persons and corporations engaged in, or whose business operations substantially affect foreign and interstate commerce;

(i) Furnishing facilities for conventions and gatherings to corporations and persons who are engaged in, or whose business operations substantially affect foreign and interstate commerce, which are attended by persons who travel in foreign and interstate commerce to and from the Miami Beach Hotel;

(j) Receiving and sending telegraphic and telephonic communications in substantial quantities from and to persons outside the State of Florida, relative to the

availability of accomodations (sic) at the Miami Beach [fol. 61] Hotel, which are transmitted in foreign and interstate commerce from and to the Miami Beach Hotel.

IV.

For the purpose of this case only, the Respondent hotel admits that it is engaged in interstate commerce within the meaning of the Act, and is subject to the jurisdiction of the Board. Neither this admission nor anything else in this stipulation shall prejudice or operate as a waiver of the respondent hotel's right to contest jurisdiction in any other unfair labor practice charge or complaint.

V.

Hotel & Restaurant Employees' and Bartenders' Union, Local #133 affiliated with the Hotel & Restaurant Employees' and Bartenders' International Union, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

VI.

All employees of Respondent Hotel, including room clerks and employees of the engineering and maintenance departments, but excluding all house detectives, all office and clerical employees other than room clerks, and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

VII.

On or about December 15, 1948, and at all times thereafter, a majority of the employees in the unit described in paragraph VI above designated and selected the Union as their representative for the purposes of collective bargaining with respondent Hotel. At all times since December 15, 1948, the Union has been the representative for the purposes of collective bargaining of a majority of

employees in the aforesaid unit and has, by virtue of Section 9 (a) of the Act, been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

[fol. 62] VIII.

This Stipulation, together with the Fourth Amended Charge, Complaint, and Notice of Hearing thereon, may be filed with the Chief Trial Examiner in Washington, D. C. and when so filed shall constitute the entire record herein with respect to the allegations of the Complaint against Respondent Hotel, without prejudice however, to the General Counsel's proceeding with respect to all other allegations contained in the Complaint and not specifically covered by this Stipulation.

IX.

The taking of testimony or the submission of further evidence and the making of findings of fact and conclusions of law by the Board, pursuant to the provisions of the Act, are hereby expressly waived by the parties hereto, except as qualified in Paragraph VIII and the Board's Order as herein provided, shall have the same force and effect as if made after a full hearing, presentation of evidence, and the making of findings thereon.

X.

Upon this Stipulation and the record herein set forth in paragraph IX above, and without any further notice or proceedings herein, the Board may enter an Order providing as follows:

A. Vanderbilt Hotel Corporation, Miami Beach, Florida, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Urging, pursuading, (sic) threatening and warning its employees to refrain from assisting, becoming members of, or remaining members of the Union;

(b) Interrogating its employees, concerning their union membership, activities, sympathies and desires;

(c) Threatening to close or curtail its business operations before bargaining with the Union;

(d) Offering its employees better wages, hours and working conditions on condition that they withdraw from or refrain from joining or assisting the Union;

[fol. 63] (e) Threatening to discharge all employees who should become members of or assist the Union;

(f) Threatening to blacklist members of the Union, and to prevent them from finding or obtaining employment at other hotels in Miami Beach, Florida;

(g) Bargaining with individual employees concerning rates or pay, wages, hours of employment, or other conditions of employment, to the exclusion of the exclusive bargaining representative;

(h) Discouraging membership in Hotel & Restaurant Employees' and Bartenders' Union, A. F. L. or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(i) Refusing to bargain collectively with Hotel & Restaurant Employees' and Bartenders' Union, Local #133, affiliated with Hotel & Restaurant Employees' and Bartenders' International Union, A. F. L., as the exclusive representative of all employees of the Miami Beach Hotel, including room clerks and employees of the engineering and maintenance department, but excluding all

house detectives, all office and clerical employees other than room clerks and guards, professional employees and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment and other conditions of employment;

(j) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Hotel & Restaurant Employees' and Bartenders' Union, Local #133, affiliated with the Hotel & Restau- [fol. 64] rant Employees' and Bartenders' International Union, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Hotel & Restaurant Employees' and Bartenders' Union, Local #133, affiliated with Hotel & Restaurant Employees' and Bartenders' International Union, A. F. L., as the exclusive representative of all employees of the Miami Beach Hotel, including room clerks and employees of the engineering and maintenance department, but excluding all house detectives, all office and clerical employees other than room clerks and guards, professional employees and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed statement;

(b) Place Milton Stern upon a preferential hiring list without prejudice to his seniority or other rights and privileges and make him whole for any loss of pay he may have suffered by reason

of the Respondent Hotel's discrimination against him by payment to him the sum of $270.00.

(c) Post at the Respondent's Miami Beach Hotel copies of the notice attached hereto and marked "Appendix A". Copies of said notice, to be furnished by the Regional Director for the Tenth Region (Atlanta, Georgia), shall, after being duly signed by the respondent hotel's represen-
[fol. 65] tative, be posted by the respondent hotel's immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent hotel to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Tenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

XI.

It is agreed that upon application by the Board, the United States Court of Appeals for the Fifth Circuit, or any other appropriate United States Court of Appeals, may enter its Decree, enforcing the Order of the Board hereinabove set forth, and all parties hereto expressly waive all rights and privileges to receive further notice of the filing of an application for the entry of such Decree or to contest the entry of such Decree, provided that a copy shall be served upon the respondent hotel after its entry.

XII.

The respondent hotel will comply with the provisions set forth in paragraph X (1) and (2) above, immediately upon approval of this Stipulation by the Board.

XIII.

This Stipulation is subject to the approval of the Board.

XIV.

This Stipulation contains the entire agreement of the parties and there is no agreement of any kind which waives, alters, or adds to this Stipulation.

In Witness Whereof the parties hereto have set their hands on the dates and at the places written opposite their names.

[fol. 66] Dated this 14th day of April, 1949,
at Miami, Florida.

Vanderbilt Hotel Corporation, by /s/ Morris Lansburgh.

Dated this 14th day of April, 1949,
at Miami, Fla.

Hotel & Restaurant Employees' and Bartenders' Union, Local #133, affiliated with Hotel & Restaurant Employees' and Bartenders' International Union, A. F. L., by /s/ Clyde Foster, Its Secretary-Treasurer.

Dated this 14th day of April, 1949,
at Miami, Fla.

By /s/ George L. Weasler, Counsel for the General Counsel, National Labor Relations Board, Tenth Region, /s/ Frank E. Hamilton, Counsel for the General Counsel, National Labor Relations Board, Tenth Region.

"APPENDIX A"

NOTICE TO ALL EMPLOYEES PURSUANT TO

A Stipulation providing for a Decree of the United States Court of Appeals, enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate

the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in the Hotel & Restaurant Employees' and Bartenders' Union, Local #133, or any other labor organization by discriminating in regard to their hire or tenure of employment or any other term or condition of their employment.

WE WILL NOT urge, persuade, threaten and warn our [fol. 67] employees to refrain from assisting, becoming members of, or remaining members of Hotel & Restaurant Employees' and Bartenders' Union, Local #133, affiliated with Hotel & Restaurant Employees' and Bartenders' International Union, A. F. L., or any other labor organization.

WE WILL NOT interrogate our employees concerning their Union membership, activities, sympathies and desires.

WE WILL NOT threaten to close down or curtail our business operations before bargaining with Hotel & Restaurant Employees' and Bartenders' Union, Local #133.

WE WILL NOT offer our employees better wages, hours and working conditions on condition that they withdraw from or refrain from joining or assisting Hotel & Restaurant Employees' and Bartenders' Union, Local #133.

WE WILL NOT threaten to discharge all employees who become members of or assist Hotel & Restaurant Employees' Union, Local #133, or any other labor organization.

WE WILL NOT threaten to blacklist members of Hotel & Restaurant Employees' Union, Local #133 or to prevent them from finding or obtaining employment at other hotels in Miami Beach, Florida.

WE WILL NOT bargain with individual employees concerning rates of pay, wages, hours of employment

or other conditions of employment to the exclusion of the exclusive bargaining agent.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Hotel & Restaurant Employees' and Bartenders' International Union, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collect bargaining or other mutual aid or protection.

[fol. 68] WE WILL OFFER to Milton Stern immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him by the payment to him of the sum of $.....

WE WILL BARGAIN collectively upon request with the above named Union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All employees of Vanderbilt Hotel Corporation, including room clerks and employees of the engineering and maintenance departments, but excluding all house detectives, all office and clerical employees other than room clerks, guards, professional employees and supervisors as defined in the Act.

All of our employees are free to become or remain members of the above-named Union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of em-

ployment against any employee because of membership in, or activity on behalf of, any such labor organization.

Dated .....

VANDERBILT HOTEL CORPORATION

By .....
(Representative)

THIS NOTICE MUST REMAIN POSTED FOR 60 DAYS FROM DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

[fol. 69]

IN UNITED STATES DISTRICT COURT

MEMORANDUM—January 8, 1957

Morris, J. Plaintiff Hotel Employees Local No. 255, hereinafter referred to as "Local No. 255," is an affiliate of plaintiff Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, hereinafter referred to as the "International Union." On June 29, 1955, Local 255 filed a petition for representation on behalf of a group of employees of the Miami Beach Hotel Association (a trade association with a membership of more than 150 hotels in the Miami Beach, Florida, area), hereinafter referred to as the "Hotel Association," with the Tenth Regional Office of the National (sic) Relations Board, hereinafter referred to as the "Board," pursuant to the provisions of the National Labor Relations Act, as amended,[1] hereinafter referred to as the "Act," Section 9 (c).[2]

[1] 61 Stat. 136, 29 U. S. C. A., Secs. 151, *et seq.*

[2] Section 9, in relevant part, provides:

(c) (1) Whenever a petition shall have been filed in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative

The Regional Director, without a hearing, on July 1, 1955, entered an order of dismissal, stating:

> On October 26, 1954, the Board issued its Decision and Order in *The Virgin Isles Hotel, Inc.*, case (110 NLRB No. 65) supplementing its recently announced standards for the assertion of jurisdiction and reiterating its long standing policy not to exercise jurisdiction over the hotel industry. Consequently, it does not appear that further proceedings are warranted inasmuch as it will not effectuate the policies of the Act to assert jurisdiction in this case.

[fol. 70] Thereafter, at the request of Local 255, the Board reviewed the Regional Director's dismissal of the petition. Both Local 255 and the Hotel Association filed briefs and made oral arguments, and on August 26, 1955, the Board, one member dissenting, issued its decision, stating:

> * * * the Board has carefully considered the appeal filed in this case and decided to sustain the Regional Director's dismissal of the petition on the ground that it would not effectuate the policies of the Act to assert jurisdiction over hotels. Accordingly, the petition is dismissed.

A motion for reconsideration and a second motion for reconsideration were denied by the Board on October 10, 1955 and January 27, 1956, respectively. Meantime, on July 7, 1955, Local 255 had filed charges with the Regional Director of the Tenth Region, alleging that the Hotel Association and its individual members had engaged in unfair labor practices in violation of Section 8 (1), (3) and (5) of the Act, and on August 30, 1955 (four days after the Board's decision in the representation proceed-

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defined in section 9 (a), * * * the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

ing), the Regional Director advised of his determination not to process the unfair labor practice charges, which action, on appeal, was sustained on October 14, 1955 by the General Counsel.

Asserting that the Board's decision is violative of their rights under Article I, Section 8, and the Fifth Amendment of the Constitution, and under the Act, plaintiffs seek a declaratory judgment to that effect and injunctive relief. The matter is now before the Court on motion of Defendants for dismissal, or in the alternative for summary judgment, and on motion of plaintiffs for summary judgment.

[fol. 71] The question of whether action, preliminary to unfair labor practice proceedings under Section 10 of the Act, plainly beyond the scope of statutory authority, whether by way of departure from statutory requirements or from those of due process of law, may be reviewed by the District Court in the exercise of its equity power has been decided for this jurisdiction in the case of *Farmer* v. *The United Electrical Workers,* 93 U. S. App. D. C. 178, 211 F. (2d) 36; see also *DePratter* v. *Farmer,* decided by our Court of Appeals February 2, 1956, *Fay* v. *Douds,* 172 F. (2d) 720 (2d Circuit), and *Leedom, et al.* v. *International Union of Mine, Mill and Smelter Workers,* S. Ct. No. 57, decided December 10, 1956. No case has been submitted nor located by the Court in which determination was made under the equity powers of the District Court requiring the Board to take jurisdiction as to any industry where the Board had determined otherwise.

The Board has consistently asserted jurisdiction over labor disputes in the hotel industry in the District of Columbia (and originally, but which it recently withdrew, in the Territories), where it may exercise plenary jurisdiction. And it has consistently declined to assert jurisdiction over hotels located in the States. Plaintiffs here complain because of the exclusion of the hotel industry, and because they were not accorded a hearing by the Regional Director.

Respecting the last mentioned complaint, I do not think plaintiffs were prejudiced by the lack of a hearing at the lower level. They were permitted to file briefs before

the Board when the matter was reviewed by it, and to make oral argument. In their argument they urged that the changes in the employer-employee relations in the hotel industry since the Board's consideration of the *St. Louis Hotel Association case*, 92 N. L. R. B. 1388, decided January 17, 1951 (wherein the International Union urged the Board to adhere to its precedent of declining to exercise jurisdiction), the present size of the industry, both as to number and income, and its impact upon commerce were such as to require the assertion of jurisdiction by the Board.

The question to be faced squarely by this Court, there-
[fol. 72] fore, is whether the Board has the discretionary power to decline jurisdiction over the hotel industry.

There can be little, if any, question that the Congress intended to lodge in the Board, rather than in the courts, a determination of what employer-employee relationships so affect interstate commerce as to require the exercise of the powers granted to the Board, *N. L. R. B.* v. *Stoller*, 207 F. (2d) 305, 307 (9th Circuit), certiorari denied, 347 U. S. 919, *Optical Workers' Union* v. *N. L. R. B.*, 227 F. (2d) 687, 691 (5th Circuit). Of course, such determination may not be arbitrary. Hence, the question resolves itself into whether or not the determination of the Board not to exercise its jurisdiction with respect to the hotel industry is or is not arbitrary and capricious.

The Board has, as heretofore stated, consistently taken the position since the enactment of the Taft-Hartley Act of 1947, and prior thereto, that the hotel industry, other than in the District of Columbia, and in certain instances in the Territories, does not have such impact on interstate commerce as to justify the exercise of the Board's power in view of the pressing demands upon the Board of other industries having greater impact upon interstate commerce. This established policy of the Board was not only well known and recognized in the industry, but also by organizations of employees, and was thoroughly approved by the International Union involved in the *St. Louis Hotel case, supra.* It is urged by the Board in the instant case that such established policy was also fully known to the Congress at the time of the enactment

of the Taft-Hartley Act. While I agree with the plaintiffs that it may not be considered as part of the legislative history of the Act, it surely has very considerable weight on the question of whether or not the Board's action is arbitrary and capricious that one of the co-authors of the Taft-Hartley Act, Senator Robert A. Taft, stated on the floor of the Senate on August 30, 1949:

> * * * The Taft-Hartley law did not change in any way the language providing for the jurisdiction of the Board, or the general definition of interstate commerce * * *. It was not my intention in 1947, nor do I believe it was the intention of other members of the [fol. 73] Committee on Labor and Public Welfare, to broaden or extend the jurisdiction of the Board in that respect. In fact, I feel very strongly that it should not be done. * * * A hotel performs its service within four walls. It ships nothing into commerce. It produces no goods for commerce. In my opinion the Act was never intended to cover the hotel industry. [Quoted from *St. Louis Hotel Association case, supra,* at p. 1390, citing Congressional Record, 81st Congress, First Session, pages 12,697 and 12,698.]

There is also judicial sanction for the exercise of such discretion as is here involved to be found in the case of *N. L. R. B.* v. *Townsend,* 185 F. (2d) 378 (9th Circuit), at 383:

> Providing the Board acts within its statutory and constitutional power it is not for the courts to say when that power should be exercised. Many factors such as lack of funds or the imminence of a more drastic disruption of commerce in another industry might dictate that in a particular case powers explicitly granted should not be exercised.

There is also recognition of such administrative discretion in the case of *United States* v. *Morton Salt Co.*, 338 U. S. 632, at 647-648, in which the Supreme Court stated:

> We know that unquestioned powers are sometimes unexercised from lack of funds, motives of expediency, or the competition of more immediately important concerns.

And subsequently, in *N. L. R. B.* v. *Denver Building and Construction Trades Council, et al.*, 341 U. S. 675, at 684, the Supreme Court stated:

> Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case.

For the reasons stated, I cannot come to the conclusion that the action of the Board in the instant case was arbitrary or capricious and, therefore, defendants' motion for summary judgment will be granted, and plaintiffs' motion [fol. 74] for summary judgment will be denied.

Counsel will prepare an appropriate order to carry this decision into effect.

January 8, 1957.

/s/ Jas. W. Morris, Judge.

IN UNITED STATES DISTRICT COURT

ORDER DISMISSING COMPLAINT—January 16, 1957

This cause having been heard on October 19, 1956, on defendants' motion to dismiss the complaint or, in the alternative, for summary judgment in their favor, and on plaintiffs' cross-motion for summary judgment in their favor; and the Court, having heard argument, considered the memoranda submitted, and, being fully advised in the premises, issued its opinion on January 8, 1957 granting defendants' motion for summary judgment in their favor and denying plaintiffs' motion on the ground that the action of the Board in the case was not arbitrary or capricious, it is hereby

Ordered, Adjudged and Decreed that the complaint be, and it hereby is, dismissed.

/s/ James W. Morris, Judge, United States District Court.

January 16, 1957

In United States District Court

Notice of Appeal to Court of Appeals—

Filed February 25, 1957

Notice is hereby given that Hotel Employees Local No. 255, Hotel and Restaurant Employees and Bartenders International Union, and Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, plaintiffs above named, hereby appeal to the Circuit Court of Ap-
[fol. 75] peals for the District of Columbia from the final order of this Court entered January 16, 1957, which order granted defendants' Motion for Summary Judgment, denied plaintiffs' Motion for Summary Judgment, and dismissed plaintiffs' complaint.

Brown and Gettler, by /s/ J. W. Brown, /s/ Ben Gettler, /s/ Jonas B. Katz, 1505 Fountain Square Bldg., Cincinnati 2, Ohio, DU 1-2121; /s/ John E. McCarty, 815 Fifteenth St., N. W., Washington, D. C., Attorneys for Appellants.

[fol. 152] [File endorsement omitted]

In the United States Court of Appeals
for the District of Columbia Circuit

No. 13,765

Hotel Employees Local No. 255, Hotel and Restaurant Employees and Bartenders International Union, and Hotel and Restaurant Employees and Bartenders International Union, A.F.L.-C.I.O., Appellants,

v.

Boyd Leedom, individually and as Chairman, National Labor Relations Board, et al., Appellees.

Appeal from the United States District Court
for the District of Columbia.

PER CURIAM OPINION—October 24, 1957

Mr. Ben Gettler, of the bar of the Supreme Court of Ohio, pro hac vice, by special leave of Court, with whom Mr. David E. Feller was on the brief, for appellants.

Mr. Arnold Ordman, Attorney, National Labor Relations Board, of the bar of the Supreme Court of Massachusetts, pro hac vice, by special leave of Court, with whom Messrs. Stephen Leonard, Associate General Counsel, National Labor Relations Board, Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board, and John E. Jay, Attorney, National Labor Relations Board, were on the brief, for appellees.

Before: Wilbur K. Miller, Fahy and Bastian, Circuit Judges.

[fol. 153] Per Curiam: We affirm on the opinion of District Judge Morris, 147 F.Supp. 306.

Affirmed.

FAHY, Circuit Judge, dissenting: I would reverse. It seems to me to be inconsistent with the terms of section 9(c) of the Labor Relations Act, as amended, and therefore to constitute unlawful action by the Board, for it to refuse to assume jurisdiction over any representation case involving any hotel, notwithstanding "a question of representation affecting commerce exists."[1] The Act says that the Board shall take jurisdiction of questions of representation affecting commerce. The verb "shall" was incorporated into section 9(c) by the Taft-Hartley Act in place of "may" in the older Wagner Act.[2] The language is also to be contrasted with that relating to unfair labor practice cases,[3] where the Board is not required to file a complaint but is "empowered" to do so.[4]

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[1] 49 Stat. 453 (1935), as amended 29 U.S.C. § 159(c) (1952).

[2] See 29 U.S.C. § 159(c) (1946).

[3] Section 10 of the Act, 49 Stat. 453 (1935), as amended 29 U.S.C. § 160 (1952).

[4] Of the four labor cases on which the District Court below relied for its decision on this point, three, *NLRB* v. *Denver Bldg.*

[fol. 154] There is no intimation in the Act that the public[5] or employees or employers should be denied the benefits of the representation provisions simply because a hotel is involved. We need not decide whether the Board as a matter of discretion or policy can validly decline jurisdiction of some representation questions involving hotels, though commerce should be affected within the meaning of the Act. See *NLRB* v. *Denver Bldg. Council*, 341 U.S. 675.[6] For in the present case the refusal of the Board to go forward was on the basis of a decision to exclude all questions of representation involving hotels. I think this is inconsistent with *Office Employes* v. *NLRB*, 353 U.S. 313, in which the opinion was handed down after the present case was decided by our District Court.

Jurisdiction in the District Court to entertain the action I think is amply sustained by our decision in *Air Line Dispatchers Ass'n* v. *National Mediation Bd.*, 89 U.S. App. D.C. 24, 27, 189 F.2d 685, 688; see, also, *Leedom* v. *Kyne*, —— U.S. App. D.C. ——, —— F.2d ——, and cases cited.

Council, 341 U.S. 675; *NLRB* v. *Stoller*, 207 F.2d 305 (9th Cir.); *NLRB* v. *Townsend*, 185 F.2d 378 (9th Cir.), dealt with unfair labor practices. The fourth, *Optical Workers* v. *NLRB*, 227 F.2d 687 (5th Cir.), though a representation case, was a denial of jurisdiction by the Board "in that case," see note 6, *infra*, because of the small amount of interstate business done by the company involved. There was no declination of jurisdiction over an entire industry. In fact, in none of the cases relied upon below was there such a declination. The only case in which the Board's refusal to exercise jurisdiction over an entire industry has been reviewed is *Office Employes* v. *NLRB*, *infra*.

[5] The public character of the rights involved has been noted often by the Supreme Court. *National Licorice Co.* v. *NLRB*, 309 U.S. 350, 363, 364, 366; *NLRB* v. *Bradford Dyeing Ass'n*, 310 U.S. 318; *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 265; *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 237; *NLRB* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 265.

[6] It is of special note that the Supreme Court in *Office Employes* quoted the following sentence from *Denver Bldg. Council*, adding the emphasis:

> the Board sometimes properly declines to [assert jurisdiction] stating that the policies of the Act would not be effectuated by its assertion *in that case*.

353 U.S. at 318.

[fol. 155] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,765—October Term, 1957.
C. A. 134-56

HOTEL EMPLOYEES LOCAL NO. 255, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AND HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L.-C.I.O., Appellants,

v.

BOYD LEEDOM, individually and as Chairman, National Labor Relations Board, et al., Appellees.

Appeal from the United States District Court
for the District of Columbia.

Before: Wilbur K. Miller, Fahy and Bastian, Circuit Judges.

JUDGMENT—October 24, 1957

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: October 24, 1957

Per Curiam.

Separate dissenting opinion by Circuit Judge Fahy.

[fol. 158] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 159]

SUPREME COURT OF THE UNITED STATES

No. 662—October Term, 1957.

[Title omitted]

ORDER ALLOWING CERTIORARI—March 3, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.